

Final Report of the Task Force on the  
Transportation and Industrial Relations Issues  
Related to the Movement of Containers at  
British Columbia Lower Mainland Ports

Federal-Provincial Task Force  
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Canada 





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## Executive Summary

In the summer of 2005, container truckers shut most road transport to the Vancouver Port Authority and the Fraser River Port Authority. The federal and provincial governments acted jointly to appoint a facilitator, and ultimately passed Orders in Council under Section 47 of the *Canada Transportation Act*, which provided for the implementation of a licensing scheme and an exemption from the *Competition Act*. Further, the federal and provincial governments appointed a three-person task force to make enquiries into the factors that led to the dispute, and to provide recommendations aimed at avoiding a recurrence while also increasing the efficiency of port operations.

As required by our terms of reference, an interim report was submitted on September 21, 2005. The interim report recommended regulatory and legislative action that the governments might take to resolve the industrial relations issues in the dispute. The contents of the interim report are incorporated in this final report.

The Task Force has received 55 written submissions and interviewed 20 groups. Representatives of the secretariat and our special advisors also interviewed other stakeholders. Stakeholders identified a number of problems, and expressed a wide range of views on potential solutions. It is clear from these submissions that the ports are critical links for Canadian business in the global economy, and that disruptions in port services affect a wide range of stakeholders. Those affected include many who are not direct participants, and who have no ability to resolve any disruption. Further, it is clear that for the ports to achieve growth opportunities arising from increased Asian container shipments, they must maintain a high standard of reliability and timeliness.

The Task Force was mandated to examine “best practices” in other ports to identify potential operational enhancements within ports in the Lower Mainland. IBI Group was engaged to undertake a major study of best practices at major container ports in North America, Europe and Asia. The results of this analysis have helped to guide the Task Force in our recommendations.

The container transportation issue in the Lower Mainland is complex. The ports have a landlord-tenant relationship with terminal operators. The terminals have a contractual relationship with the shipping lines. The shipping lines contract with shippers. The shippers contract with both shipping lines and trucking companies. To achieve efficiency the participants - shippers, truckers, terminals, and shipping lines - must operate in a highly coordinated fashion, but the web of contractual relationships does not provide an effective incentive structure for optimizing the overall efficiency of the system.

Trucking firms in the Lower Mainland have consistently shown themselves to be unable to exercise sufficient pricing discipline to adjust rates in response to cost pressures and changes in industry operating practices. The costs have been borne by the owner-operators who have twice withdrawn their services to seek redress, once in 1999 and again in 2005. Collective agreements that were signed following the 1999 dispute proved impossible to enforce due to rampant price-cutting. The Task Force believes that the trucking industry’s inability to respond to changing

circumstances and cost increases in a manner that maintains a reasonable income to truckers is clear evidence of market failure. However, the issues that brought the situation to a crisis point originated in part from inefficiencies in the port system, and solutions cannot be found solely in reforming industrial relations between trucking firms and drivers.

The impact of industrial relations issues and operational issues has led the Task Force to make recommendations in both areas. On the industrial relations issues, the Task Force has concluded that no solution will gain the unanimous approval of all stakeholders. Many submissions called for a pure market-driven approach. However we believe this approach would rekindle the dispute, and result in further damage to the reputations of the ports. Others called for the introduction of mandatory sectoral bargaining. The Task Force believes such an approach, while legally permissible, would likely lead to unacceptably higher costs.

The Task Force considered a range of labour relations options, including allowing market forces to prevail; imposing sectoral bargaining on the container trucking sector; and continuing the current licensing scheme without modification. In the end, the Task Force rejected these options and recommended a number of actions that would implement a modified licensing scheme and an exclusion or exemption from the provisions of the *Competition Act*.

On the broader issue of port operations, the Task Force recommends changes in terminal operating hours, consideration of a centralized mandatory reservation system, a concerted approach to cross-sector implementation of advanced technology, and federal-provincial funding to establish an organization that would mobilize the resources of Lower Mainland academic institutions to expand the capacity and knowledge base of the port community. This organization could work in cooperation with the recently established Bureau of Intelligent Transportation and Freight Security at the University of British Columbia on port-related intelligent transportation system initiatives.

The Task Force considered two models for implementation of these recommendations. One model relies exclusively on federal legislation and labour jurisdiction along with direction from the federal Minister of Transport to ports to establish implementation mechanisms. In this model, the Port Authorities must play a central coordinating role across the entire sector.

The other model envisages a shared jurisdiction. The Province would pass legislation to establish an entity intended to undertake a range of analytical and consensus-building work to support the implementation of best practices within the port, including establishing a compensation regime for container truckers and maintaining ongoing compensation oversight for this group. The federal Minister of Transport would then instruct the ports to implement a licensing regime that would require that truckers and trucking companies, as a condition of receiving a license, comply with the rates established by the entity. The entity would work with the Port Authorities and other stakeholders to maintain reliability and to smooth the flow of traffic within port operations and to implement best practices on a commercial basis, sharing costs and benefits appropriately.

The Task Force believes its recommendations can be implemented effectively under either a federal model or a shared jurisdiction model, and that the choice of model is a matter for consideration by the two governments. However, in order to implement best practices across the

port logistical chain, the Task Force believes that whichever model is selected, it is essential to create capacity for analytical work and consensus building. The federal and provincial governments, the Port Authorities, and private sector companies should share the costs of implementing this initiative.

Based on its work and deliberations on this complex matter, the Task Force recommends that the:

1. federal and provincial governments work together to create the capacity for analytical work and consensus building throughout the port sector to implement best practices. Governments should provide two years start-up funding and seek agreement among the Port Authorities and private sector agencies to provide funding for this work over the long-term;
2. federal Minister of Transport direct the Port Authorities to adopt a licensing scheme for companies and drivers involved in short-haul transportation of containers to and from Lower Mainland ports, in order to manage the number of drivers and vehicles and to ensure fair compensation for those drivers;
3. federal government take certain specified actions to establish an exemption from the provisions of the *Competition Act* to apply to parties to the modified licensing scheme and the existing Memorandum of Agreement, or alternatively, that the federal government take certain actions as described in this report and the Province establish the “regulated conduct exemption” by passing legislation to establish an agency with the specific authority to set compensation and conditions associated with eligibility for this work;
4. federal Minister of Labour seek to clarify the status of the owner operators for labour relations purposes and the appropriate jurisdiction (federal or provincial) over the owner-operators;
5. federal Minister of Labour take steps to assist the parties in establishing conditions that can foster industrial relations stability in the port sector;
6. *Canada Labour Code* and, if necessary, the *British Columbia Labour Code* be amended to prohibit picketing at gates to port or marine terminals, and to suspend the right of access to the ports by trucking firms during lawful labour disputes;
7. federal Minister of Transport direct the Vancouver Port Authority and the Fraser River Port Authority to:
  - a. require that terminal gate operating hours be increased until trucking congestion is eliminated to the extent reasonably possible; and,
  - b. develop systems to continually monitor truck delays both inside and outside the gates at each terminal within their respective jurisdictions.

8. federal Minister of Transport direct the Vancouver Port Authority and the Fraser River Port Authority to work with terminal operators, off-dock terminals, trucking companies, and owner-operators to evaluate, and if appropriate, implement a centralized mandatory reservation system across all terminals;
9. federal Minister of Transport direct the Port Authorities to work with all stakeholders to improve the efficiency of operations both on and off the docks through application of advanced technology, including such initiatives as:
  - a. open architecture common information systems;
  - b. intelligent transportation system applications;
  - c. monitoring the inventory of empty containers; and,
  - d. optical character recognition, transponder, and radio frequency identification technology for security and tracking purposes.
10. federal Minister of Transport require the Vancouver Port Authority and the Fraser River Port Authority to make periodic public reports on progress achieved in implementing the recommendations involving those Port Authorities; and,
11. federal and provincial governments fund the establishment and ongoing operation of an organization which would mobilize the resources of Lower Mainland academic institutions to expand the capacity and knowledge base of the port community.

## 1. Introduction

On August 4, 2005 the federal Minister of Transport, in collaboration with the federal Minister of Labour, the BC Minister of Labour and Citizens' Services, and the BC Minister of Transportation established a three-person Task Force (Eric John Harris, Q.C., Kenneth Freeman Dobell, Randolph Kerry Morriss) with a mandate to "examine the functions and structure of the transportation and industrial relationships issues related to the movement of containers into and out of ports in the Lower Mainland of British Columbia (BC) with a view to recommend a long-term strategy to facilitate industry relations, prevent the disruption of the movement of containers and maintain the efficiency and effectiveness of the national transportation system".

The Task Force was created to respond to concerns raised by a work stoppage organized by the Vancouver Container Truck Association representing truck drivers (primarily owner-operators but also employee drivers) in the local drayage market serving container terminals at the Vancouver Port Authority and the Fraser River Port Authority. The work stoppage, which began on June 27, 2005, disrupted port operations and had a significant negative impact on both the regional and national economies. The dispute ended on August 4, 2005, when the Governor in Council instructed the Lower Mainland Port Authorities to impose a licensing system on the container trucking industry. Trucking companies were subsequently required to sign a Memorandum of Agreement pledging improved compensation levels for drivers. A similar dispute disrupted port operations in 1999, and the most recent recurrence of labour unrest in the container-trucking sector has raised concern over the long-term reliability of the Lower Mainland ports.

The issues leading to the withdrawal of service by Vancouver Container Truck Association members fall into two categories. The first is the negative effects of competitive erosion of the trip rates paid to owner-operators, in conjunction with rising operating costs (particularly for fuel). The second is the issue of operating practices for handling containers in the Lower Mainland, which affect the efficiency of trucking operations. These include the introduction of new off-dock container terminals, which has resulted in drivers performing uncompensated trips, and excessive waiting time at both on-dock and off-dock container terminals.

As required by the Task Force mandate an Interim Report was submitted to the Ministers on September 21. The Interim Report dealt primarily with issues related to the establishment and maintenance of compensation rates, including the enforceability of a licensing system operated by the Lower Mainland Port Authorities to accomplish this task. It also addressed potential legislative and regulatory frameworks available to the federal and provincial governments as well as broader issues of industrial relations between the parties.

This Final Report incorporates the contents of the Interim Report, and deals with the broader issues of port efficiency included in the Task Force mandate. It identifies impediments to the efficiency of container movements within British Columbia's Lower Mainland and provides recommendations on the roles the various participants should play in overcoming these

obstacles. Based on an analysis of best practices at other ports, the Task Force makes recommendations to improve operating practices for handling containers in the Lower Mainland.

## **2. Background to 2005 Dispute**

### **1999 To 2005**

In the submissions we received and in all of our interviews, we did not find anyone who was surprised that a dispute arose between the trucking companies and the owner-operators in 2005. To the contrary, it is clear the industry knew that significant pressures had developed which made it difficult for owner-operators to maintain reasonable incomes.

The dispute which occurred in 2005 was preceded by a similar work stoppage in 1999. The main issues in 1999 were fundamentally the same: low rates of compensation for drivers, and operating practices in the container transportation system, which limited the productivity of drivers. The 1999 dispute, and the remedial measures which were promoted by the Vancouver Port Authority to alleviate port inefficiencies affecting the drivers, form the backdrop for the current dispute.

In 1999 an estimated 450 owner-operators withdrew service from July 22 to August 23.<sup>1</sup> The dispute was ended following the imposition of a licensing scheme by the Vancouver Port Authority very similar in nature to that imposed by direction of the Order-in-Council in August 2005. It required trucking companies wishing to access the port terminals to sign a Memorandum of Agreement setting out rates of compensation for owner-operators. The 1999 Memorandum of Agreement contained increased trip rates for the first thirty days after ratification, to be followed by the adoption of hourly rates. The Memorandum of Agreement was ratified by the owner-operators on August 22, 1999. Several companies signed collective agreements with the Teamsters incorporating the hourly wage.

The attempt to force a move to hourly rates failed. All except two companies quickly reverted to trip-based rates. Rate cutting quickly eroded gains made because of the 1999 dispute. The companies that had signed hourly compensation agreements were particularly vulnerable; one of the companies sold its port trucking operations, and the other reverted to a trip-based 70/30 revenue split with a \$40 per hour minimum in 2001<sup>2</sup>. In November 2000 the Vancouver Port Authority announced a modified licensing system that excluded any provision related to compensation of drivers.

In the aftermath of the 1999 dispute the Vancouver Port Authority set up a number of committees to address port inefficiency issues. One such committee is the Container Stakeholder Working Group. It was formed with a mandate to increase the efficiency of terminal and trucking

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<sup>1</sup> Canadian Industrial Relations Board Westnav Container Services Ltd. Board File: 20522 Decision no. 55; February 18, 2000.

<sup>2</sup> Teamsters Local 31.

operations through improving communications, preventing port shutdowns, extending operating hours, and managing peak periods. Committee members include ocean carriers, terminal operators, off-dock terminal operators, trucking companies, rail carriers, general merchandise shippers, freight forwarders, forest product shippers and the Vancouver Port Authority.<sup>3</sup> The Container Stakeholder Working Group has functioned as a “closed” forum i.e. membership is limited and non-members have not been permitted to participate. The owner-operators are not represented on the Working Group although a request for membership has recently been made by the Vancouver Container Truck Association.

The Container Terminal Scheduling Committee reviews, studies and proposes possible improvements to truck appointment systems utilized by the Vancouver Port Authority container terminal operators. Committee members include trucking companies, terminal operators and the Vancouver Port Authority.<sup>4</sup> Each terminal operates an individual reservation system (including Vanterm and Deltaport, both of which are operated by Terminal Systems Inc.) and the level of reliance on appointments for scheduling varies considerably.

In theory, the reservation systems are supposed to increase the productivity of the terminals by reducing variability in the arrival rates for trucks, and increase the productivity of trucking operations by reducing turnaround time for picking up and dropping off containers. The current reservation systems are seen to be deficient by everyone involved in their use. Terminals complain that trucking companies abuse the reservation system, making appointments and failing to show up. Trucking companies, drivers and transload operators indicate that under the current system they cannot obtain sufficient appointments to deliver their loads, and that trucks often face long waits even when they arrive on time for their appointment.

Centerm has recently introduced a new reservation system called SCORE for export shipments from transload facilities. The SCORE system provides preferential access to appointments (48 hours in advance rather than 24) for transload facilities rather than trucking companies. The transload operators are required to submit full cargo information in advance. SCORE participants have generally indicated that service quality has improved but the system is not well liked among trucking companies.

The Empty Container Dynamics Study Committee focuses on and develops a plan to ensure sufficient off-dock capacity (rail and truck) exists to efficiently accommodate implementation of the on-dock repositioned empty container reduction strategy. The Committee also analyzes existing off-dock truck and rail empty container capacity, identifies capacity requirements and geographical options for adding capacity to meet projected requirements, and promotes and facilitates appropriate private or public sector involvement in adding capacity. Committee members include terminal operators, off-dock terminal operators, ocean carriers, trucking companies, rail carriers and the Vancouver Port Authority.<sup>5</sup>

In 2001, Port Vancouver Ventures, a wholly owned subsidiary of the Vancouver Port Authority, provided 50% of the investment capital for development of the Coast 2000 facility on the Fraser

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<sup>3</sup> [http://www.portvancouver.com/trade\\_shipping/services/stakeholder.html](http://www.portvancouver.com/trade_shipping/services/stakeholder.html)

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

River Port Authority's Richmond property. Construction of the first phase was completed in December 2003, and resulted in a substantial addition in the capacity for off-dock storage in the Lower Mainland. The Vancouver Port Authority sold its stake in Coast 2000 to Western Stevedoring in August 2004.

In December 2003 the Vancouver Port Authority announced a target of moving 50% of empty containers to off-dock storage. The Empty Container Dynamics Study Committee developed a protocol to be enforced by the Port requiring the shipping lines to move empties off-dock. The Vancouver Port Authority decided not to implement that protocol. The terminals were opposed because storage of empties is a source of revenue when the terminal is not congested. The trucking companies and shipping lines were opposed because it imposed additional costs. The compromise was that the terminals would change the basis of the charges to the shipping lines to provide an incentive for off-dock storage, and to compensate the shipping lines for the additional costs. Contracts between terminal operators and shipping lines are being modified as required by the policy when they are renewed.

Whether through the Vancouver Port Authority initiative or as a response to short term congestion problems at the terminals, off-dock storage of empty containers has increased. This has imposed additional costs on trucking companies and owner-operators. Truck trip patterns and compensation were traditionally based on round trips to and from the container terminals. Owner-operators have traditionally been paid on the basis of a 70/30 revenue-sharing split with trucking companies, and since they were picking up or dropping empties at the docks, they were paid for each leg of the round trip.

The introduction of off-dock storage introduced a non-revenue "third leg" to trip patterns. Instead of a balanced haul to and from the docks, owner-operators are required to travel unloaded (i.e. without a container) to an off-dock facility to pick up an empty container. This can add significantly to trip mileage, and delays at off-dock facilities reduce the number of trips they can make in a day.

In the fall of 2004 a Focus Group for Extended Gates was formed to develop proposals for implementation of extended truck gate hours at the container terminals. This resulted in a proposal for a pilot program to extend operations at Deltaport. The pilot was scheduled to begin on July 5, 2005 but was temporarily shelved due to the trucking dispute.

While it is clear that significant efforts have been made to resolve the issues that resulted in the 1999 dispute, the recurrence of the work stoppage in 2005 indicates that these measures have been inadequate.

### **Chronology And Commentary – The 2005 Dispute**

In late May 2005, in order to address their issues, truck drivers formed an unincorporated association named the Vancouver Container Truck Association. This Association spent a number of weeks lobbying the other stakeholders in the short-haul container transportation sector, and

received a good deal of sympathy but no concrete undertakings that would alleviate their concerns.

The Vancouver Container Truck Association efforts included discussions with the drayage companies in late June 2005. It would not be accurate to describe these meetings as negotiations, as they were very short in duration and did not appear to be well organized. Nevertheless, the discussions tended to focus on the truckers' demands - a fuel surcharge and an increase in the rates paid to owner-operators by the trucking companies.

On Monday, June 27, 2005, the members of the Vancouver Container Truck Association stopped work. This work stoppage resulted essentially in a cessation of container movement by road to and from the Lower Mainland ports.

On Thursday, June 30, 2005, the federal and provincial governments jointly appointed Vince Ready as a facilitator between the parties in the dispute. Meetings then commenced between the Vancouver Container Truck Association, representatives of the trucking companies, and Mr. Ready with the assistance of Peter Cameron. During the meetings, the issues initially raised by the Vancouver Container Truck Association were broadened to include a variety of matters, including proposals related to the security of the work of the owner-operators.

Certain trucking companies, as well as certain importers, commenced actions for damages against the Vancouver Container Truck Association, its executive members and persons whose names were unknown. Two injunctions were sought and obtained, aimed at preventing members of the Vancouver Container Truck Association from blocking access to the Fraser Surrey docks in Surrey, the CP Rail yard in Pitt Meadows and the Delco container storage facility in Delta. The BC Labour Relations Board and the Canada Industrial Relations Board both granted orders against members of unions who were refusing to work during the dispute.

Throughout July, discussions continued with Messrs Ready and Cameron. During the first week, the trucking companies offered rates, which later appeared as the first year rates in the Memorandum of Agreement. In subsequent negotiations, the parties agreed on specific additional terms and conditions.

In the last week of July, intensive round-the-clock bargaining took place. At the end of the day, the parties were unable to resolve only two issues. The first was the timing of the second rate increase – with the companies proposing to make it effective during a third year of the Memorandum of Agreement, and the Vancouver Container Truck Association proposing it for the second year. The second issue was a proposal by the Vancouver Container Truck Association for language in the Memorandum of Agreement that would either prevent the trucking companies from hiring new employees and using new owner-operators, or that at least would ensure that any new employees or owner-operators would be dispatched only after all current employees and owner-operators were working. The companies strongly resisted any version of this proposal.

The bargaining took place in an atmosphere in which the many parties affected by the dispute, including stakeholders in the short-haul trucking sector, were calling for government intervention to end the dispute.

On July 29, 2005, Messrs Ready and Cameron made recommendations to the parties to resolve the dispute. The recommendations dealt comprehensively with the issues already agreed, and the two outstanding items. On the latter two items, Messrs Ready and Cameron (1) rejected the Vancouver Container Truck Association proposal with respect to new company-owned trucks or the hiring of additional owner-operators; and (2) recommended, as proposed by the Vancouver Container Truck Association, that the second rate increase become effective in the second year.

The Vancouver Container Truck Association accepted the recommendations but the trucking companies did not. The companies had expressed concern that the Memorandum of Agreement violated the *Competition Act*, and in any event would not protect signatories from undercutting by non-signatories. In order to assist in the resolution of the dispute, on July 29, 2005, the federal government issued an Order-in-Council exempting the parties from having to comply with the *Competition Act* and enabling the adoption of an interim licensing system which required that the trucking companies pay their owner-operators the rates stipulated in the Memorandum of Agreement.

On August 4, 2005, the federal government issued an amended Order-in-Council requiring the Vancouver Port Authority and the Fraser River Port Authority to establish a licensing system for all container trucks requiring access to a Lower Mainland port, except those trucks with drivers covered under a collective agreement. Thereafter, a licensing system was adopted which established licenses for a period of two years and required all trucking companies to sign the Memorandum of Agreement in order to have access to the ports. Thereafter, all short-haul container-trucking companies obtained licences and drayage operations recommenced.

There are those who would argue that the Memorandum of Agreement effectively rewards the Vancouver Container Truck Association for improper conduct, including illegal activity by people who presumably are Vancouver Container Truck Association members.

One problem with this perspective is that most observers conclude there was merit in the concerns of the owner-operators. It seems clear that the incomes of the truckers have in fact fallen behind increases in their operating costs. The federal and provincial governments appointed a facilitator to help the trucking companies and the owner-operators address these concerns on their merits.

In that context, it would seem unusual to punish the many owner-operators whose only activity during the dispute was to withdraw their services (an activity the participants and most observers believed at the time was legal), in order to avoid rewarding a small minority who may have engaged in egregiously illegal activity. Some of the stakeholders conveniently forget the position they took during the dispute, and now argue that the dispute was an unlawful conspiracy.

Some of the stakeholders criticizing the outcome of the facilitated negotiations as “rewarding illegal behaviour” conveniently ignore the fact that, during the dispute, they were calling for the

parties to reach an agreement to end it. In fact, some of those making that criticism today were actually participants in the facilitated talks that resulted in the Memorandum of Agreement.

Lastly, we need to underline that this is not the first time such a dispute has developed. The failure of the response to the 1999 dispute was one of the causes of the dispute in 2005.

It is obvious to the Task Force that this dispute created substantial damage to the reputation of the ports involved. Container traffic is an extremely significant economic activity and is growing in importance. Additionally, the dispute created substantive damage to importers and exporters who depend on the ports to receive and export their goods. Many of the submissions, as well as the interviews conducted, underlined these economic facts. The Orders-in-Council make it plain that the governments of Canada and British Columbia had determined that this dispute was unacceptable and was creating real damage to Canada.

### **3. Summary of Submissions and Presentations**

#### **General Impact Of The Strike**

The Task Force benefited from a number of intelligent submissions, a listing of which is presented in Appendix 3 to this report. Virtually all submissions agreed that the Lower Mainland ports are an essential service to Canadian industry and retailers and that the impact of the withdrawal of service was widespread. Canadian businesses were unable to ship and receive goods, and both large and small companies were forced to find alternate means of shipment, to renegotiate contracts, and to concede business. Some time-critical import products were not processed in time for markets.

The cost to business has been significant. Shippers have been forced to make alternate arrangements, including use of other ports and shipping local goods to Calgary by rail, for reshipment to the Vancouver region. Some submissions suggested that these changes may become permanent, with a resulting cost to the local economy. The reputation of the Lower Mainland ports for timely and efficient services has been affected; one submission noted that eight disruptions have occurred over the last ten years.

#### **Port Logistics**

The Task Force was told that the Lower Mainland container ports are somewhat unusual in that container imports and exports are relatively balanced and that export of forest products and specialty grains by container is now a permanent feature of the business landscape (the availability of alternative breakbulk service has declined). Notwithstanding the significant volume of exports, exporters believe that their business is not a priority for the terminals, all of which concentrate on serving the ships that are their direct customers.

The Task Force was told that coordination across the various interests in the ports logistics chain is limited – the ports, terminals, depot operators and trucking companies all pursue their own economic interest without consideration of the overall impacts of those decisions. Significant growth in container shipments has forced changes in the operation of the terminals. One example involves limits placed on the return and storage of empty containers that has required expansion in the number of off-dock container terminals. This has forced truckers to travel three legs instead of two to complete a trip. Several business submissions argued that a major logistics review should be undertaken by a private sector consultant experienced in such analysis.

### **Stakeholders' Comments On The Problems, Responses and Potential Solutions To The Dispute**

Parties making submissions took distinctly different positions on the nature of the problem and the most appropriate solution. For instance, many of the business associations and the shipping firms are of the view that once the term of the 90-day Order-In-Council expires, the most appropriate response is to return to the free market situation which existed at the beginning of the dispute. The Vancouver Container Truck Association, on the other hand, clearly expects some form of rate structure as established under the Ready/Cameron Memorandum of Agreement to be the starting point for further adjustments designed to better the lot of the independent owner-operators who precipitated the dispute in the first place. Others, primarily labour representatives, suggested that a combination of unionization, an employer association and sectoral bargaining was an appropriate solution that would provide labour relations stability.

In support of that position, others noted that the cost of entry into the trucking business was relatively low; that there was an oversupply of truckers; that changes in port operations (the addition of a number of off-dock depots and queuing delays at both on-dock and off-dock terminals) and increasing costs made it impossible for truckers to earn a reasonable income; that the “per trip” rate structure was undesirable in that it did not recognize delays beyond the control of the truckers; and that the practice of shippers and trucking companies in seeking minimum costs led to the inappropriate discounting and a “race to the bottom” of the rate continuum.

These parties tended to argue that even if operating issues within the port were fully resolved, the central issues arising out of excess competition and unlimited entry would remain. They argued that the number of truckers must be limited; that unionization should be encouraged and sectoral bargaining implemented; and that port licences should require that trucking companies accessing the ports pay an established rate. Some organizations suggested that adjustments were already underway to frustrate the intent of the Memorandum of Agreement – trucking companies were moving to employee drivers, and the rate structure envisaged in the Memorandum of Agreement was already being violated.

Some characterized the owner-operators as independent business people, for whom imposed rates and enforcement are entirely inappropriate. Others noted that most owner-operators work primarily for a single trucking company, and that they clearly fall within the definition of dependent contractor under both federal and provincial labour legislation. Some suggested that the local trucking industry was appropriately regulated under the provincial code, while others

suggested that the service is vital and integral to a federal undertaking, and that they should be regulated federally.

Some organizations took the position that the process established by governments was not legally sound; that the Orders-in-Council were not issued appropriately; and that the Memorandum of Agreement and port licence procedures violated the *Competition Act* and were inconsistent with the objectives of the *Canada Transportation Act*. We were advised that legal challenges were underway.

A significant group of stakeholders argued that the action by the Vancouver Container Truck Association of withdrawing its drayage services en masse was illegal either under labour legislation or the *Competition Act*. There is widespread belief that significant acts of intimidation made the withdrawal effective. Many of these stakeholders thought that the response of the federal and provincial governments and the police was slow and inadequate, exacerbating the problem.

For example, the BC Trucking Association, supported by the Canadian Trucking Alliance, takes the position that the provincial government failed to use the full force of the law to protect those trucking companies, their employees and owner-operators from blockades, threats, and damage to property and violence incurred by those attempting to gain entry onto port property. The BC Trucking Association says that lack of government support and appropriate enforcement of the *Criminal Code of Canada* had the effect of empowering and emboldening some owner-operators to use intimidation to effectively close down the ports.

The Western Canadian Shippers' Coalition says that the service withdrawal by the independent owner-operators was only made effective through the use of unlawful tactics and the apparent police tolerance for such behaviour. The Canadian Manufacturers and Exporters feel that the Ready/Cameron Memorandum of Agreement essentially rewarded the container truckers for the violence, intimidation, vandalism, and coercion undertaken by extreme and rogue elements of that community.

### **The Port Authorities**

Both the Vancouver Port Authority and the Fraser River Port Authority take the position that the law was not appropriately enforced during the dispute. The Vancouver Port Authority goes so far as to allege that police obstructed truckers not involved in the dispute while those truckers attempted to access the terminals. A submission on behalf of ProWest Transport Ltd. and Team Transport Ltd. suggests that the Task Force should make recommendations on the need for the legal system – especially those responsible for its administration – to respond more effectively when citizens attempt to achieve their own aims by brute force. Their submission posits that others may now learn from the Vancouver Container Truck Association dispute that the recipe for solving your economic woes is to act illegally and without regard for the interests of others.

Unlike the Vancouver Port Authority and Fraser River Port Authority, the North Fraser Port Authority, by virtue of the nature of its business, takes the position that it should not be included

in any solutions that might be proposed for use at the other Lower Mainland ports. This is because no direct action was taken by truckers at any locations at the North Fraser Port Authority; the Orders-In-Council did not impose a licensing system upon the North Fraser Port Authority; and, in the words of the CEO of the North Fraser Port Authority, "...we use unionized hourly rated trucking employees in our port and we have had no problems that need to be 'solved'..."

Both the Vancouver Port Authority and the Fraser River Port Authority, believe the Orders-In-Council/Memorandum of Agreement/licensing program have been successful in getting the ports operating again, but they also assert that regulation is not an acceptable solution in the long term largely because the Port Authorities do not believe that they have the capacity, or the authority to impose such a regime. They argue the most appropriate solution to ensure that truckers are reasonably compensated is through a system based upon increased productivity rather than regulation. Both the Vancouver Port Authority and the Fraser River Port Authority, take the position that a two-year Memorandum of Agreement establishing rates guarantees another trucking crisis at the end of its term.

### **Reservation Systems And Terminal Gate Openings**

We heard a wide range of comments that the current reservation system does not work. Major line-ups occur first thing in the morning and lesser line-ups early in the afternoon. At other times there is little congestion. We heard that there is a "market" in reservations, with some organizations obtaining as many reservations as possible and reselling those they could not use. Figures were presented indicating that slots were 115% booked but only 45% were utilized.

Many participants suggested that the reservation system should be amended to provide penalties if reservations are not used, and to link reservations to specific shipments of goods rather than to trucking companies. The terminal operators acknowledged problems with the reservation system, and expressed a willingness to develop and implement a new system that would link to all terminals and resolve some of the existing problems.

We heard from shippers and some others that terminal gates should be open longer hours. Terminal operators, however, suggested that gates had sufficient capacity at present container volumes; that many shippers were not open to send or receive goods outside normal working hours; and that when terminals did open longer hours or on weekends, traffic was minimal to modest.

Both the Vancouver Port Authority and the Fraser River Port Authority acknowledge that issues that at least in part sparked the dispute could be addressed by initiatives such as mandatory reservations at terminals, possibly centralizing dispatch services among trucking firms, implementing improved technology solutions to wring trucking costs out of the system, implementing extra hours of operation for terminal gates, and establishing a permitting system that would set performance standards for trucks using the port. The Port Authorities do acknowledge this was also their view at the end of the 1999 dispute that was similar to the most recent difficulties, and that solutions have not been implemented.

## **Regulation, Licensing Systems and Labour-based Solutions**

In general, the business community as represented by such stakeholders as the Canadian Manufacturers and Exporters; truckers like ProWest Transport and Team Transport; the BC Trucking Association; the Western Canadian Shippers' Coalition; the Forest Products Association of Canada; the Business Council of British Columbia; the Retail Council of Canada; the Independent Contractors and Businesses Association of British Columbia; and the Shipping Federation of Canada, among others, are all adamantly opposed to what they see in varying degrees as a move, through the Memorandum of Agreement and the potential for more long term solutions akin to those in the Memorandum of Agreement, to re-regulate the container trucking industry.

Objections to any form of regulation are based largely on the view that such action flies in the face of national transportation policy; that it most likely offends the *Canada Transportation Act* and the *Competition Act*; and that it leads to long term inefficiencies by taking away incentives for ports, terminals, shippers, receivers, and truck operators to improve the efficiency of their operations. A number of submissions make the assertion that the fact that independent truckers cannot earn a decent living means that there are too many drivers chasing the same cargo. Drivers are thus faced with the choice of consolidation or unionization and a number of submissions look favourably on encouraging the truckers to unionize so that any future work stoppages or disputes can fall within the ambit of applicable labour legislation.

These business stakeholders are also of the view that governments must be better placed to deal swiftly and decisively with what are seen as similar non-labour stoppages in future. Some recommend that the federal government amend the *Competition Act* to allow the Commissioner to issue temporary orders prohibiting individuals from engaging in anti-competitive acts, and that the provincial government review the position taken by police forces in British Columbia so that more decisive action can be taken in the future.

There is, however, some support among the business community for a port licensing system that prescribes service standards rather than rate regulation thereby increasing the efficiency of those using the port/terminal system; for the Port Authorities to be empowered to implement and enforce such service standards on terminals and other users of the ports; for terminals to be compelled by ports to establish throughput standards at gates; and that a mandatory central reservation system be established for access to terminals by container truckers (with attendant penalties for misuse). It is quite clear that virtually the entire independent business community believes that a regulated rate scheme over the long term will be a huge mistake.

The submissions to the Task Force by the International Longshoremen's & Warehousemen's Union Local 500 and by the Teamsters Union 31 support a union-based solution to the current dispute. In the case of the International Longshoremen's & Warehousemen's Union, the position is that the trucking companies should all be represented by one employer's association and licensed through a non-transferable license by the Port Authorities. All drivers must then be unionized and, under a master agreement between employers and the union, establish a level

playing field for both sides. There would then be a negotiated wage rate set for all truck drivers that would in turn stop companies and drivers from undercutting each other. One rate, according to the International Longshoremen's & Warehousemen's Union submission, would allow for maintenance of vehicles, wages and profit. In a variant to the immediate unionization option, the Teamsters take the view that the Memorandum of Agreement could be allowed to run its course under the guidance of a port licensing system but that during this period, a poly-party negotiating process ought to be established by legislation by which to negotiate rates and conditions upon expiry of the Memorandum of Agreement and thereafter. The Vancouver Container Truck Association submission to the Task Force also indicates a willingness to abide by a permanent port authority-imposed system of non-transferable licensing for owner-operators and trucking companies.

In any event, it seems that there is some support in both the business and labour sectors for the owner-operators to adopt some sort of organized labour solution if only to make the resolution of disputes more predictable. In this connection, the Task Force has been advised that the Canadian Auto Workers Union has now applied for certification on behalf of the Vancouver Container Truck Association.

There is little agreement among stakeholders on an appropriate future regulatory environment that may be available to the provincial and federal governments. While neither the Vancouver Port Authority nor the Fraser River Port Authority supports the notion of licensing and regulation, if this becomes the preferred choice of government, then the Port Authorities prefer to have the Canadian Transportation Agency established as the regulatory body. The Port Authorities feel that the regulatory system would need to go well beyond the licensing system described in the Orders-In-Council and that the system would need to apply to new entrants, successors and all truckers that haul containers. In short, the Port Authorities take the view that there should be no exceptions in a regulated industry. The regulatory body would need to license trucks and equipment, establish tariffs, enforce compliance with those tariffs, carry out compliance audits, engage in periodic rate reviews, and deal with violations. The Port Authorities' view is that implementation of such a system would need to replace the Memorandum of Agreement and the current licensing system imposed by government.

In the view of the BC Maritime Employers' Association and the Western Canadian Shippers Coalition, the current short-term solution imposed by the Memorandum of Agreement should not be continued over the longer term. Rather, these associations feel that a better long-term solution is the licensing of port users by the Port Authorities to control access/egress; to exercise tighter security; to focus on terminal operating hours and effective reservation systems; and to ensure that players abide by the law in all respects. Interestingly enough, the Forest Products Association of Canada, Terminal Systems Inc., P&O Ports, and Fraser Surrey Docks Ltd. all support the adoption of a mandatory centralized reservation system that, in the view of Norman Stark, CEO of Terminal Systems Inc., should be coordinated and subsequently enforced by the Port Authorities. Licensing standards and revocation of licenses for breach of their terms should be the job of the Port Authorities according to these stakeholders.

The BC Trucking Association makes a particular point of recommending against the creation of any new "super port authority" to develop, implement and monitor standards for terminals and

port authorities. Rather, the BC Trucking Association takes the position that this is squarely within the purview of the Port Authorities. That is, "...to the extent that any of the (ports')... current responsibilities and/or mandate may conflict with the leadership role that we envision, this could be effectively addressed by the federal government by amending the (ports')... mandate".

Similarly, although the BC Trucking Association goes beyond the BC Maritime Employers Association by advocating the abolition of the Orders-In-Council and the Memorandum of Agreement with a return by the Port Authorities to their pre-dispute licensing system, the association does support empowering the Port Authorities to implement service standards on terminals and to impose penalties for non-compliance. The BC Trucking Association together with the Shipping Federation of Canada, also recommend that the province amend provincial legislation to impose substantial penalties on those who blockade roads or prevent container traffic from accessing those roads. The Federation further asserts that the Quebec legislation mandates a consultative forum for the resolution of future disputes but goes on to recommend that the federal government might also mandate relevant ports to establish and maintain an intermodal committee to address efficiency issues and to develop operational benchmarks and procedures.

Certain exporters including the Saskatchewan Pulse Growers, the Canadian Special Crops Association, and the Manitoba Pulse Growers Association Inc. have all suggested that, given its vital importance to the national economy and of its importance to the perceived reliability of Canadian ports, container shipping should be declared an essential service like the bulk grains sector has been. These stakeholders are also of the view that a federal policy should be adopted that would invoke section 47 of the *Canada Transportation Act* after two weeks of disruptions in BC and Quebec ports.

The Vancouver Container Truck Association makes the point that labour jurisdiction in ports as it relates to container truckers is murky at best. This view is held as well by a number of other stakeholders including the Teamsters Union Local 31. The Vancouver Container Truck Association believes that a federal government move to deem as a federal undertaking the movement of containers by truck within the Lower Mainland and Fraser Valley to and from container terminals would be the most expeditious way of clearing up the labour jurisdiction issue thereby permitting the Vancouver Container Truck Association to seek appropriate union certification.

## **Summary**

In summary, while the Port Authorities are not keen to be put in the position of licensing users and would prefer either the free market approach or a fully regulated regime by the Canada Transportation Agency; most other stakeholders would, in one way or another, be supportive of a port authority-imposed licensing regime as long as it did not set rates. Other stakeholders feel that provincial or federal legislation is required to provide the necessary tools to prevent illegal blockages of port access, to mandate ports to establish intermodal consultation committees, and – in the case of the ports themselves – to give them what they see as the needed authority to take

on these roles. Still other stakeholders would prefer to see government designating container shipping as an essential commodity. In regard to labour relations in the port container-trucking sector, it would appear that the Vancouver Container Truck Association itself – the instigator of the most recent trucker’s dispute – recognizes the fragility of the current Memorandum of Agreement-imposed solution and that a more robust answer is required to regularize the situation for its members. Accordingly, it would appear that the Vancouver Container Truck Association is moving to full union certification in the near term thereby securing for their members the certainty of working conditions and remuneration that they desire.

## 4. Research

### West Coast Port Context

The Lower Mainland ports accounted for around 9.4% of West Coast container traffic in 2004. The San Pedro Bay ports – Los Angeles and Long Beach – dominate the TransPacific container trade, accounting for 62.5% of West Coast traffic in 2004. Their share increased from 62.0% in 2003 in spite of longshore labour shortages and rail service problems.

<b>West Coast Ports Container Traffic</b> (Thousand TEU’s)	2003	Share	2004	Share
Los Angeles	7179	37.6%	7321	34.9%
Long Beach	4658	24.4%	5780	27.6%
Oakland	1923	10.1%	2045	9.7%
Tacoma	1738	9.1%	1798	8.6%
Seattle	1487	7.8%	1776	8.5%
Vancouver Port Authority	1539	8.1%	1665	7.9%
Fraser River Port Authority	253	1.3%	317	1.5%
Portland	304	1.6%	275	1.3%
Total	19081	100.0%	20977	100.0%

*Source:* Port websites - includes empty containers

Trans-Pacific container traffic through the top six West Coast ports increased by 10.0% in 2004. Vancouver Port Authority’s container traffic increased by 7.9% to 1.66 million TEU’s. Fraser River Port Authority reported a 26.8% increase in containers to 320,136 TEU’s, surpassing the Port of Portland in volume.

The share of Trans-Pacific trade accessing US East Coast destinations by the all-water route has been growing as shippers diversify their supply chain options. The East Coast (all-water) share increased from 18.6% in 2001 to 21% in 2002 as discount retailers opened large distribution centers near East Coast ports. The all-water route has a lower shipping cost but a longer transit time.

## **Vancouver vs US West Coast Ports**

Though engaged in the same trade as the US West Coast ports, the structure and economics of port operations in the Lower Mainland differ in some fundamental ways.

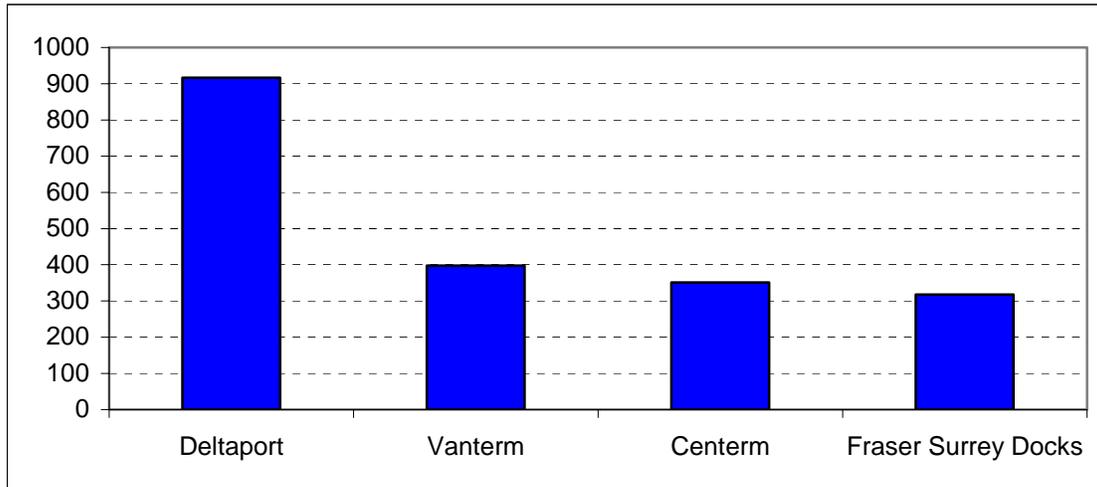
1. Lower Mainland terminal operations are organized on a “common-user” model. Many terminals at US ports are operated on a proprietary basis by the shipping lines and are viewed as “cost centres” in their overall operations. The shipping line business is less “mobile” from the US ports due to their direct capital investment in the terminals. The Lower Mainland terminals’ revenue is almost exclusively derived from loading and unloading containers from vessels; there is no revenue derived from truck gate operations. At the US ports, proprietary users have provided leadership in managing the risks and costs of extending gate hours. Common-user terminals are following suit to ensure their shipping line clients remain competitive.
2. The US terminals are largely organized around “wheeled” operations, i.e. containers are stored in the terminal on chassis. Due to the requirement for chassis on the terminal, the shipping lines own the chassis fleet. In the Lower Mainland containers are “grounded” i.e. stacked on the ground, and the trucking companies own the chassis fleet. Wheeled operations require more terminal space for similar traffic levels but provide some benefits in terms of pickup and delivery of containers by truck. There is a trend in major US common-user terminals for the shipping lines to pool chassis and transfer management responsibilities to the terminal operator. This frees up valuable space on the terminal by consolidating the chassis inventory, and improves enforcement of chassis quality standards.
3. The Lower Mainland has an advantage over the US ports due to the greater availability of westbound revenue traffic. This is also a strategic advantage for Western Canadian exporters who reap the benefits of low backhaul rates to Asia for their shipments. Primary commodities exported in containers from the Lower Mainland include lumber, pulp, paper, specialty grains and animal feed (alfalfa and hay).

## **Background on the Drayage Industry in the Lower Mainland**

The drayage industry consists of firms transporting containers by truck between points within the Lower Mainland. The work consists primarily of transporting loaded import containers from the on-dock container terminals (Centerm, Deltaport, Fraser Surrey Docks, and Vanterm) to warehouses or distribution centres to be unloaded; transporting loaded export containers from shippers or transload centres to the deepsea terminals; and repositioning of empty containers. Containerized import cargo consists primarily of consumer goods from Asian factories. Containerized export cargo includes forest products, specialty grains and scrap.

Traffic through the Lower Mainland on-dock container terminals totaled almost 2 million Twenty Foot Equivalent Units (TEU’s) in 2004, distributed among the terminals as shown in Figure 1.

**Figure 1: Lower Mainland Container Traffic by Terminal – 2004 (000 TEUs)**



Approximately 65% of Lower Mainland container traffic is transported to and from the terminals by rail, leaving around 35% or 700,000 TEU's to be transported by truck. Of this, only a small percentage is transported by truck to areas outside the Lower Mainland.

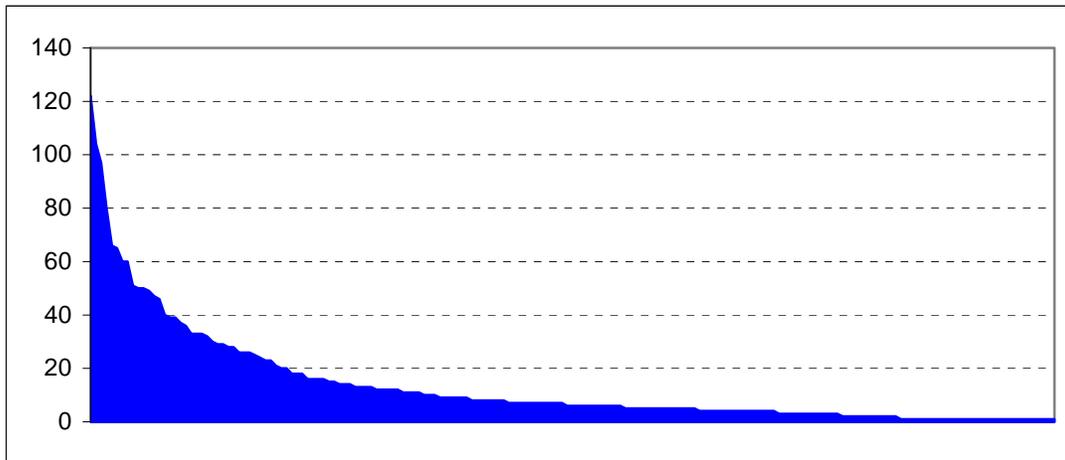
The majority of containers transiting the Lower Mainland ports are 40-foot containers, each accounting for 2 TEU's. Using average figures reported for Deltaport, the ratio of TEU's to containers is approximately 1.7, implying that 40-foot containers account for around 70% of the total. On this basis the annual demand for drayage services among the four terminals in 2004 can be estimated at around 410,000 containers.

## **Sector Profile**

The drayage sector possesses the fundamental characteristics of a highly competitive market.

1. The industry is highly fragmented. In August 2005, the Vancouver Port Authority imposed a licensing system regulating access to port container terminals. Any firm serving the terminals must now be licensed. There are approximately 180 local drayage firms accounting for 2500 trucks registered under the Vancouver Port Authority licensing system. The largest firm has only a 5% share of the truck fleet, and the top 10 firms account for only 30% of the truck fleet. The distribution of firm size (measured by truck fleet) is shown in Figure 2.

**Figure 2: Distribution of Drayage Truck Fleet by Firm - 2005**



On the basis of the data, it is evident that the fleet is very fragmented.

There appears to be a high rate of entry and exit of firms. The Vancouver Port Authority imposed a similar licensing system following the trucking dispute in 1999. There has been little change in the number of trucks or firms licensed at the ports since 1999. Initial registrations in 1999 totalled 202 firms and 2600 trucks, slightly higher than the current level. Of the 202 firms licensed in 1999, only around 50 are still licensed under the same business name in 2005. Six of the top 20 firms in 1999 remain in the top 20 in 2005. The firm with the largest number of trucks licensed in 1999, Emerald Transport, is no longer in business. Another significant change is the disappearance of a significant truck fleet operated by BC Rail.

It seems likely that the number of trucks intensively engaged in the drayage industry is significantly smaller than the number licensed to serve the port terminals. The Vancouver Container Truck Association estimates there are around 1000 owner-operators working full time in the drayage sector. On the basis of the relationship between container traffic and truck fleet, this would be more consistent with figures reported for US West Coast ports. The ports of Seattle and Tacoma are estimated to have around 2000 trucks for a combined container volume of 3.8 million TEU's in 2004.

2. There are low barriers to entry to this industry sector, at the level of both trucking firms and owner-operators.

Approximately 85% of the truck fleet is owned by owner-operators, which substantially reduces both capital investment requirements and risk for trucking firms. Capital investment requirements for trucking firms consist primarily of investment in chassis for the carriage of containers. Trucking firms typically maintain a chassis pool of 3 to 4 chassis per truck in the fleet employed. Average chassis costs are estimated at \$15,000 per unit.

The cost of entry to owner-operators is very low. Trucks in the drayage sector are typically used high-mileage highway tractors. According to stakeholder interviews, the cost of a truck suitable for drayage service ranges from approximately \$25,000 to \$40,000. Skill requirements to enter the industry are also low, with the major requirement being a Class 1 provincial driver's licence.

3. There is limited potential for scale economies among trucking firms. The transfer of risks of delay and cost increases to owner-operators limits the incentive for investments in technology to improve the efficiency of operations such as computer-aided dispatch systems.

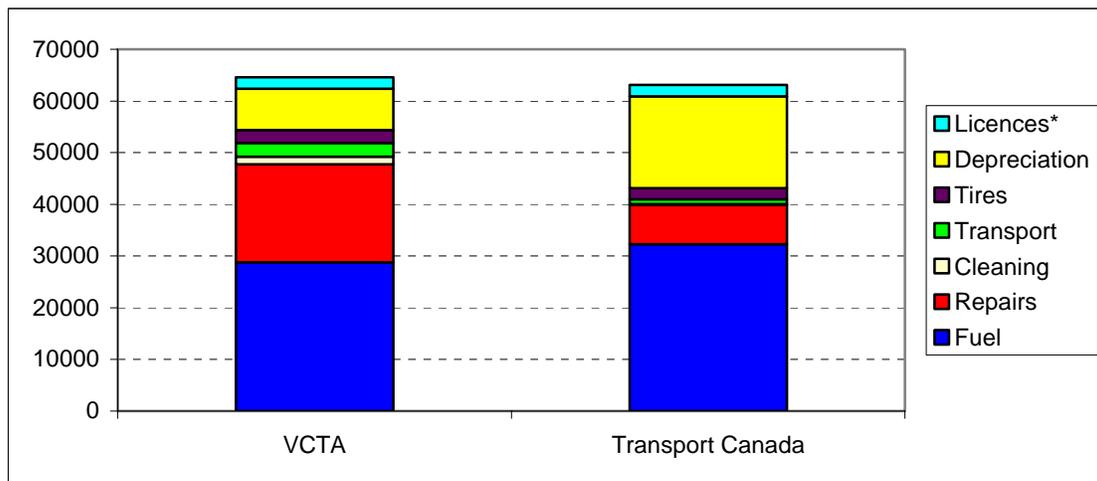
There are no scale economies at the owner-operator level and the ratio of capital to labour is essentially fixed (i.e. one driver per truck). There is little opportunity for more intensive use of the capital stock (i.e. the truck) due to the limited operating hours of the container terminals (8 hours), off-dock facilities and warehouses. Driver hours of service are limited to 13 hours per day by provincial safety regulations.

4. As a provider of a commodity service to industrial users, the drayage industry has very limited scope for product differentiation.

### **Industry Costs**

The Vancouver Container Truck Association estimates total variable and fixed costs for each tractor in the order of \$360 per day or around \$87,000 per year. For verification, these estimates have been compared to estimates generated from the costing information contained in the 2003 edition of Transport Canada’s Operating Costs of Trucks in Canada, adjusted for changes in fuel prices. The Vancouver Container Truck Association expenses have been categorized to be as consistent as possible with the methodology used in Operating Costs of Trucks in Canada. The results are illustrated below:

**Figure 3: Estimated Annual Tractor Variable and Fixed Costs - 2005 VCTA vs Transport Canada Estimates**

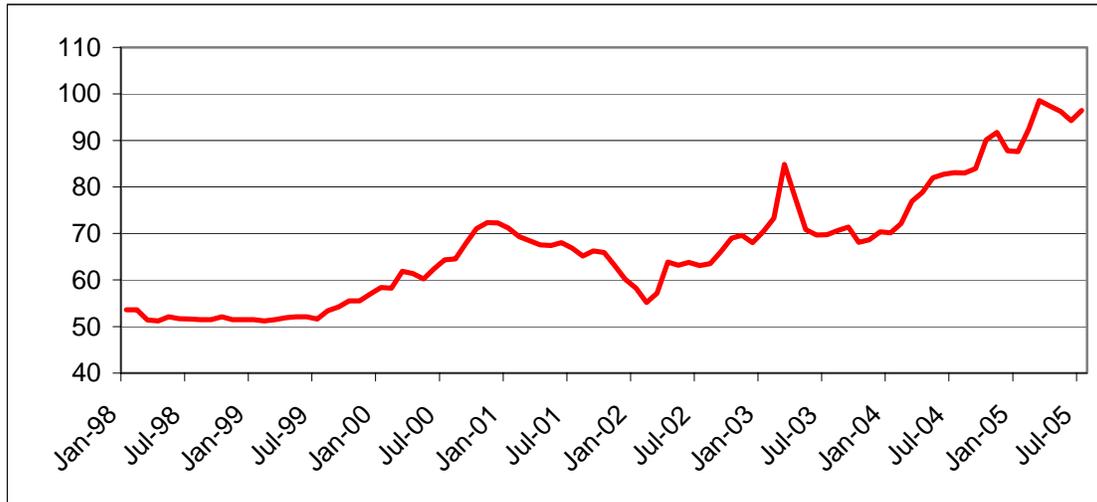


- Excludes insurance costs

The Operating Costs of Trucks in Canada estimates costs based on a line haul truck operating using a three-year old tractor traveling 80,000 km per year. Depreciation costs are based on those applicable to a new tractor with a purchase price of approximately \$112,000. The Vancouver Container Truck Association estimates are based on older trucks in predominantly urban service traveling around 65,000 km per year. The average purchase price of a used tractor for use in the

drayage sector is \$25,000 to \$40,000. Consequently we would expect the Vancouver Container Truck Association cost estimates to reflect higher repair costs due to the age of the tractors, but lower depreciation than the Operating Costs of Trucks in Canada estimates, and this is indeed the case. The figures depicted above indicate the sensitivity of total costs to fuel prices: fuel accounts for around 50% of total costs. Fuel costs have risen dramatically since 2003:

**Figure 4: Average Diesel Fuel Prices - Vancouver Monthly January 1998 to July 2005 (Cents per Litre)**



The Vancouver Container Truck Association cost estimates do not include administration and interest cost on working capital or any return on investment. The Operating Costs of Trucks in Canada estimates 2003 costs for administration and interest on working capital for a 5-axle tractor-trailer combination at \$19,273. Interest costs for financing equipment purchase are estimated at \$2,995. A 5% profit margin would add an additional \$7,303. Taken together, these cost categories add an additional 43.6% to total truck costs. The lower capital requirements for second hand equipment for use in the drayage sector and limited administrative requirements mean that these costs would be significantly lower among owner-operators serving the ports.

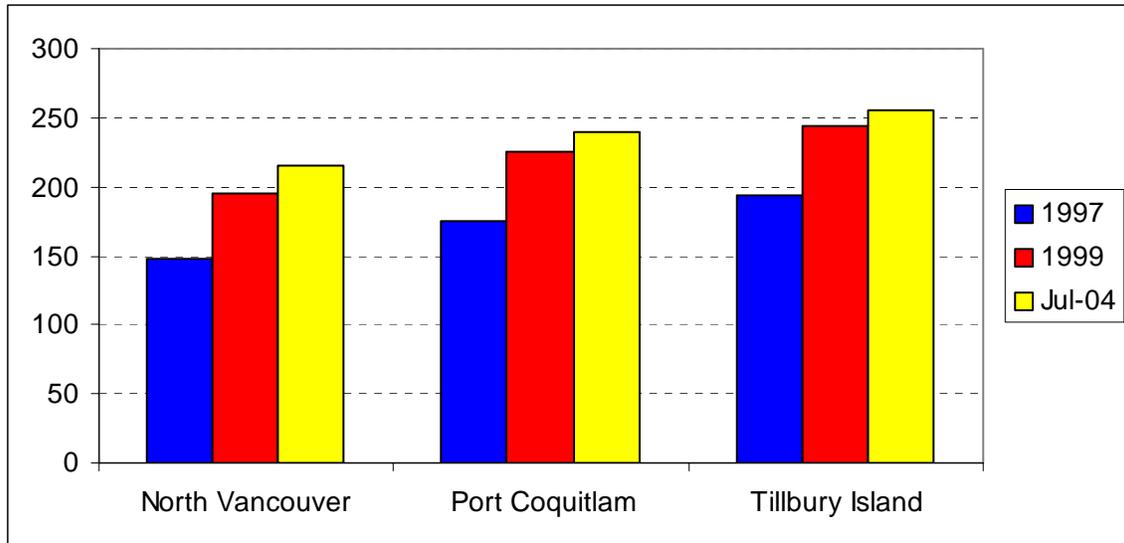
### **Drayage Rates**

Drayage rates are negotiated between trucking firms and their individual customers, which include importers, exporters, freight forwarders and shipping lines. These rates have traditionally been quoted on a round-trip basis i.e. including pickup of a loaded import container and return of the empty to the docks; or drop-off of a loaded export container and pickup of an empty. There are discount rates for large exporters, and one-way rates for repositioning of empty containers.

The industry has a history of cutthroat price competition. In recent times the only significant rate increases occurred as a result of the 1999 and 2005 work stoppages. Trucking firms announced rate increases of around 15% in July 2004 ostensibly to compensate owner-operators for increased costs, but it appears that the application of these increases was uneven.

Representative listed rates from carrier rate sheets for three locations from 1997 through July 2004 are shown below:

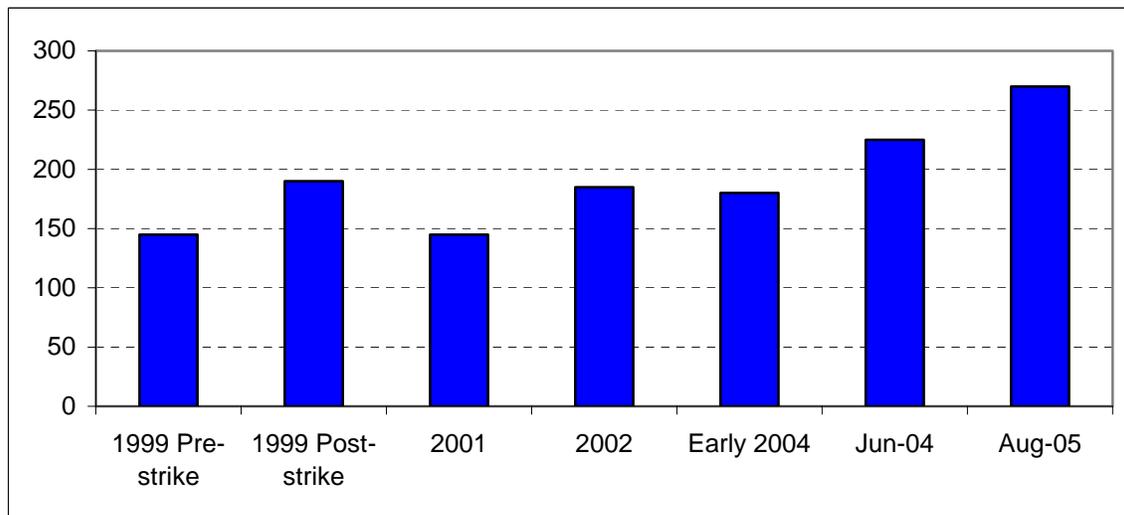
**Figure 5: Representative Drayage Rates from Inner Harbour Terminals - 1997 to 2004**



*Source:* Carrier Rate Sheets

The pattern of rates actually paid by a large exporter since 1999 is illustrated below. Rates eroded quite rapidly following the 1999 dispute.

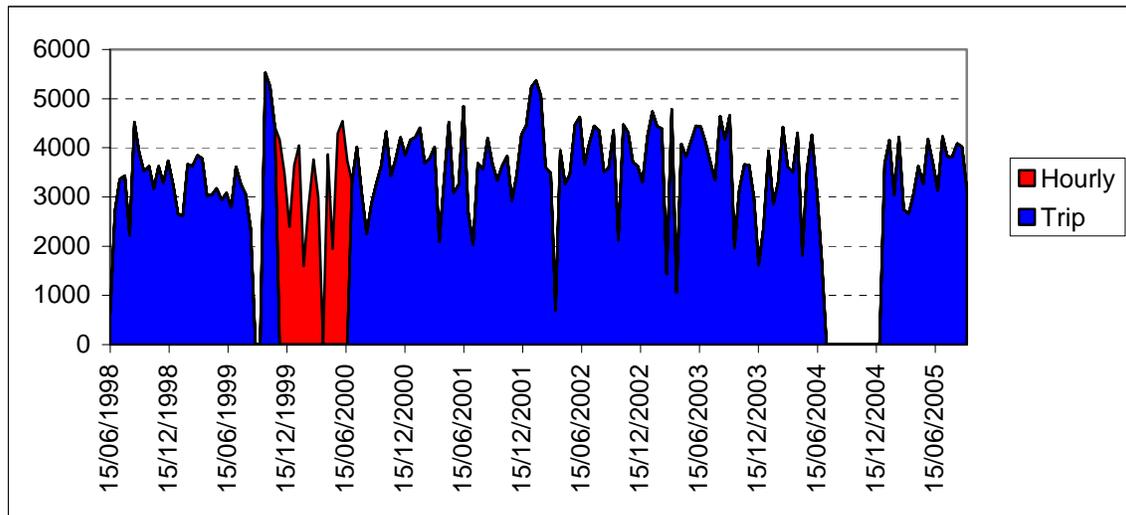
**Figure 6: Average Roundtrip Drayage Rates - Exports 1999 to 2005**



*Source:* Exporter Records

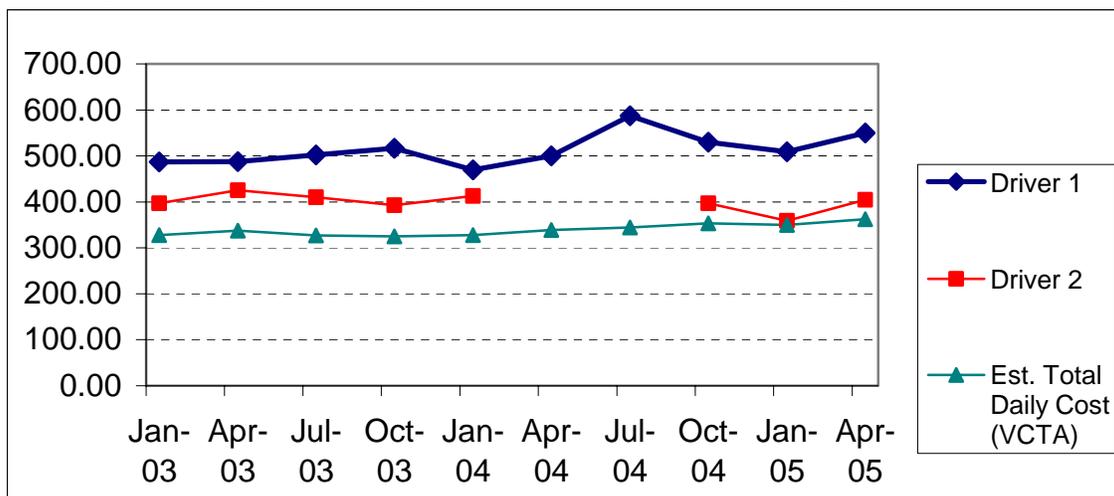
Except for a short period following the 1999 dispute, owner-operators have been paid on a revenue split basis with owner-operators receiving 70% and trucking firms 30% of the total dray rates. The graph below shows biweekly revenue for an owner-operator from June 1998 to June 2005. Following the strike in August 1999 the company was certified by the Teamsters and paid on an hourly basis until April 2000. This driver did not work for a good portion of 2004.

**Figure 7: Sample Driver Biweekly Income - June 1998 to June 2005**



The graph below shows average daily compensation at 4 month intervals for drivers from two firms, one unionized (Driver 1) and one not (Driver 2). Total cost estimates are Vancouver Container Truck Association figures adjusted for fuel prices.

**Figure 8: Sample Owner-Operator Average Daily Revenue - January 2003 to April 2005 (4-month intervals)**

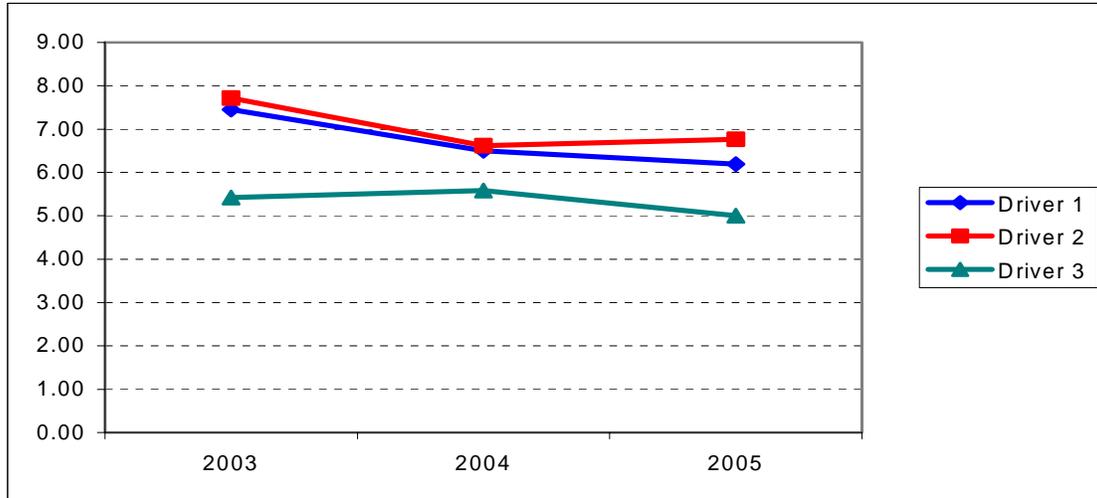


**Industry Efficiency**

Reduced efficiency in the container handling system was a major issue in both the 1999 and 2005 disputes. In 1999 the problems related primarily to excessive queuing delays due to congestion at the container terminals. In 2005 the trucking industry was again faced with delays at the container terminals due to congestion. However, a change in operating practices in the form of a move to off-dock storage of empty containers has imposed additional delays and costs on the trucking sector. The burden of these costs falls entirely on owner-operators. A comparison

of the daily average number of one-way revenue trips per day for three drivers, from two different companies, for January 2003, 2004 and 2005 is shown below. The decline in the daily average number of one-way revenue trips ranges between 8% and 17%.

**Figure 9: Average Daily One-Way Revenue Trips - January 2003, 2004 and 2005**



## **External Impacts**

The recurrence of a withdrawal of service in 2005 over the same issues that led to the 1999 disruption indicates a fundamental problem in the drayage industry in the Lower Mainland. The trucking firms are unable to exercise sufficient pricing discipline to adjust to cost pressures and changes in industry operating practices. The costs are borne by the owner-operators who in the absence of a collective bargaining framework have had little option but to withdraw services to seek redress. The collective agreements based on hourly compensation, signed following the 1999 dispute, were impossible to maintain due to price-cutting by non-complying firms.

During the dispute, containers destined for local delivery piled up on the docks, hindering loading and unloading of containers for rail shipment. Importers as far away as Toronto and Montreal were affected, as their merchandise was to be trucked to distribution centres in the Lower Mainland for reloading to rail cars or domestic containers for their long haul journey. Containers and vessels were diverted to the Ports of Seattle and Tacoma to avoid the congested Vancouver docks. Following resolution of the dispute, it took over six weeks to clear the backlog from port terminals.

The economic cost of the dispute was substantial. The Retail Council of Canada suggested that the incremental costs to retailers could be as much as \$100 million. The Canadian Manufacturers and Exporters suggested that the strike cost manufacturers hundreds of millions of dollars in lost sales, freight costs and financial penalties. Within the industry itself, trucking firms and warehouses lost hundreds of thousands.

The long-term costs of instability in port operations may be greater. Increasing trade with China will provide substantial opportunities for both importers and exporters in the Canadian economy, and in the transportation sector. The recently completed BC Ports Strategy estimates that increased cargo traffic through BC could increase national GDP by \$3 billion per year by 2020. In order to realize this economic opportunity, the Lower Mainland ports need to rebuild their image as a reliable North American Gateway. Recent visits to China by the federal Minister of Transport and the provincial Minister of Transportation confirm that the Chinese are very worried about future disruptions at Canadian ports. We understand that the Department of Foreign Affairs and International Trade has evidence that certain Chinese companies are already exploring moving their business to the Ports of Seattle and Tacoma should further disruptions occur at Canadian west coast ports.

### **Terminals and Off-Dock Facilities**

The deep-sea terminals are the focal points for the network of facilities that makes up the container transportation system in the Lower Mainland. Off-dock container facilities engage in a variety of activities related to the handling of freight transported in international marine containers, including unloading, consolidation and forwarding of import shipments, and reloading of containers for export. In the last two years, they have taken on a larger role in the storage of empty containers as a means of maintaining the productivity of the deep-sea terminals. These are key activities in maintaining the competitiveness of the Lower Mainland ports as a link in firms' supply chains, and greatly increase the local economic impact of international container traffic.

Inefficiencies in interactions with these facilities – queuing delays and unproductive trips – ranked as high as rate level complaints among the issues leading to the withdrawal of trucking services. If these inefficiencies continue to multiply, it will be difficult to achieve long-term stability in the drayage sector, because the only way to achieve stability in truckers' incomes will be continual escalation of trucking rates.

### **Queuing Delays at the Deep-Sea Terminals**

There are no hard data available on delays due to queuing outside the deep-sea terminals. The terminals maintain data relating to their efficiency in handling transactions once trucks enter the terminal (“turn times”) but do not monitor delays outside the terminal. The turn times reported by the terminals are generally under thirty minutes. They appear to be similar to those reported by other North American container terminals. They are significantly better than those reported in a 2003 survey on terminals at the Port of Long Beach which reported a mean turn time of approximately 98 minutes, though there was a wide variation.<sup>6</sup>

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<sup>6</sup> A Study of Drayage at the Ports of Los Angeles and Long Beach Kristen Monaco and Lisa Grobar, Department of Economics California State University Long Beach, December 15, 2004, p. 40.

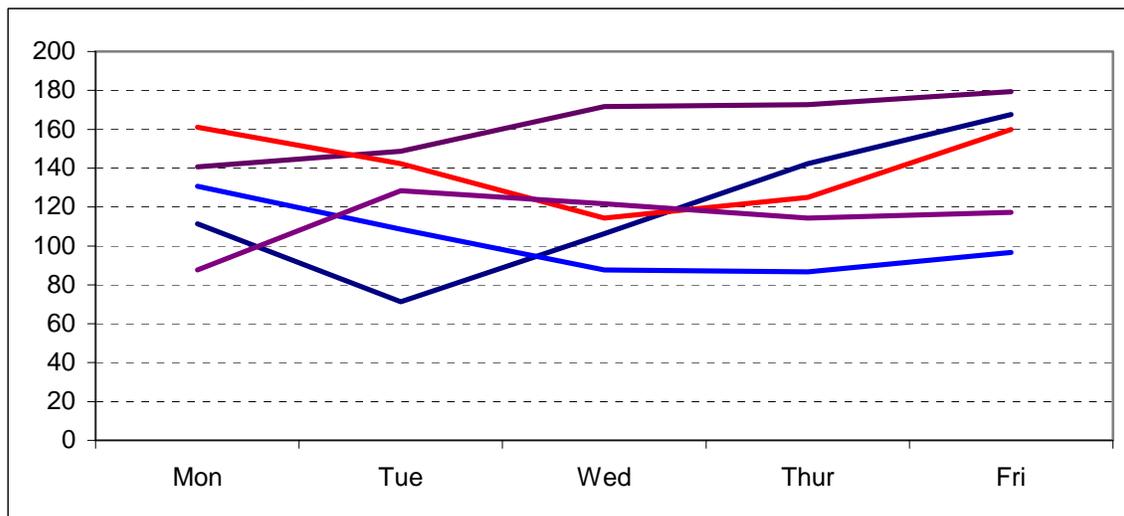
Queuing delays outside the terminals are not monitored. The rationale for this is the belief that these queues are largely beyond terminal management’s control, since terminals do not control the arrival rates of trucks.

The current system of handling containers leads to significant peaking of traffic at the deep-sea container terminals. One of the major factors contributing to this result is the compression of time windows for delivery of loaded export containers. There are two major factors responsible for this: Earliest Receiving Dates, and US Customs Freight Remaining on Board regulations.

Earliest Receiving Dates indicate the earliest date prior to vessel arrival when deliveries of export containers will be accepted at the terminal. These dates are established to limit the dwell-time for export containers on the terminal. Following the 1999 dispute, the Vancouver Port Authority implemented a reduction in the Earliest Receiving Dates at the terminals from 10 working days to 5. Standard Earliest Receiving Dates remain at 5 days, but terminals have been known to impose additional restrictions to cope with vessel delays and terminal congestion.

US Customs Freight Remaining on Board regulations require full manifest information be submitted on shipments transiting US ports 24 hours prior to vessel sailing. For cargo booked on vessels transiting US ports, this effectively reduces the delivery window by an additional 1 to 2 days. Many export bookings include large numbers of containers. The reduced Earliest Receiving Dates and Freight Remaining on Board requirements often require that these be delivered within a 2-day window (i.e. two 8 hour shifts on the truck gates) to the terminal. Both trucking companies and transload facilities struggle to accommodate the resulting surges in activity.

**Figure 10: Index of Loaded Export Containers by Day of Week - 5-Week Sample, 2004**

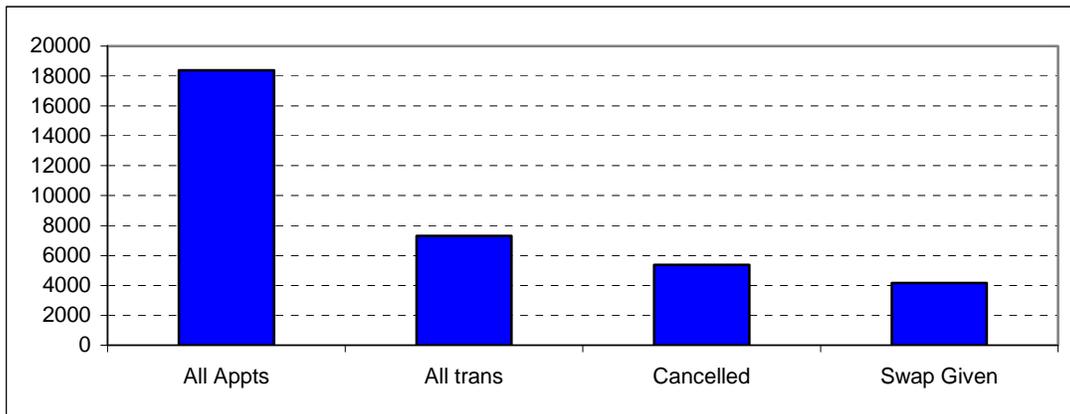


In theory the terminal reservation systems could help to accommodate the surges by scheduling truck arrivals. In practice, since reservations have been issued on a first come first serve basis, and have not been linked to specific cargo bookings, all appointments are typically booked by trucking companies within minutes of becoming available on the web. Firms with large bookings

to deliver have found themselves unable to obtain sufficient appointments to fulfill their requirements and truckers have been forced to queue in non-reservation lanes. This has been particularly troublesome where there is a significant difference in the level of service between reservation and non-reservation lanes.

The lack of linkages between cargo bookings and appointments has also led to high levels of non-completion of export cargo bookings. The graph below shows the performance of the reservation system at Centerm over a 90-day period:

**Figure 11: Centerm Reservation System - Appointments, Transactions, Cancellations and Swaps (90 Day Period)**



The number of appointments made substantially exceeds actual transactions, and many appointments are cancelled at the last minute preventing them from being reallocated. It is possible that trucking companies attempt to monopolize appointments as a means of denying them to their competitors. The new SCORE reservation system introduced at Centerm has improved access for large export bookings by enabling transload facilities (rather than trucking companies) to book appointments 48 hours (rather than 24 hours) in advance, conditional on prior receipt of all cargo data.

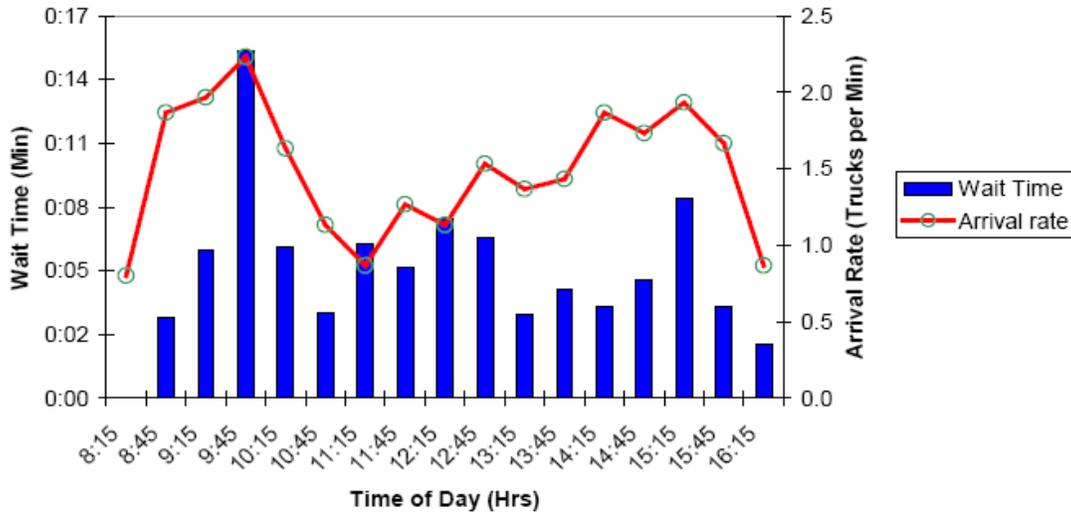
The peaking of traffic at the terminals provides an incentive for expansion of the owner-operator fleets employed by the trucking companies. Companies need to maintain sufficient capacity to deliver within a narrow time window, and the owner-operators bear the costs of inadequate utilization of their trucks on off-peak days. Many participants, including the Vancouver Container Truck Association, have suggested that the transfer of risk to the owner-operators leads to inefficiencies in the dispatching of trucks, and has contributed to line-ups at the terminals, prior to both the 1999 and 2005 disputes.

*Since owner operators were paid by the trip versus the hour, trucking companies had choices. For example, if a trucking company had 10 containers to move from a terminal on a given day they could be moved by 10 trucks taking one trip each or 5 trucks taking two trips each or other combinations. If the 10 truck approach is used by many companies the lineup at the terminal at the beginning of the day will be longer than if the 5 truck approach were chosen. The Vancouver Container Truck Association members believe that many trucking companies*

employ the “10 truck” approach. A further complexity is that there are fewer movements per truck per day and therefore owner operator income drops.<sup>7</sup>

One indication of problems is the prevalence of line-ups at the terminals up to several hours before the gates open. This pattern is not typical of terminals in other ports. The graph reproduced below shows truck arrival times and average wait times outside the gates noted in a survey in the summer of 2004 at the Evergreen terminal in Los Angeles<sup>8</sup>:

Figure 12: Average Wait Times – Evergreen Terminal, Los Angeles



The line-ups prior to opening at the Lower Mainland terminals may be a reflection of the importance to owner-operators of getting an early start on the first trip of the day so they are available for dispatch on a second and third trip before the work for the day has been completely allocated.

### Empty Container Storage and the “Third Leg” Problem

The impact of the Vancouver Port Authority’s policy aimed at moving empty containers off-dock is difficult to establish. The terminal operators have indicated that a precondition to the success of the policy is renegotiation of their contracts with the shipping lines, which are currently structured on a through rate which includes the cost of receiving empties at the terminals. Since changes can only occur when contracts are up for renewal, this is a long-term undertaking. Terminal Systems Inc. has altered contracts which have come up for renewal to provide rebates for containers which are stored off-dock rather than returning to the terminal.

<sup>7</sup> Vancouver Container Truck Association Submission, August 24 2005 pp. 5-6.

<sup>8</sup> Source: Cooperative Optimum Time Window Generation for Cargo Delivery/Pick up with Application to Container Terminals Draft Report METRANS Project 03-18 April 2005 Petros Ioannou, Anastasios Chassiakos, Hossein Jula, Gil Valencia University of Southern California Electrical Engineering - Systems, Los Angeles, CA and California State University, Long Beach College of Engineering.

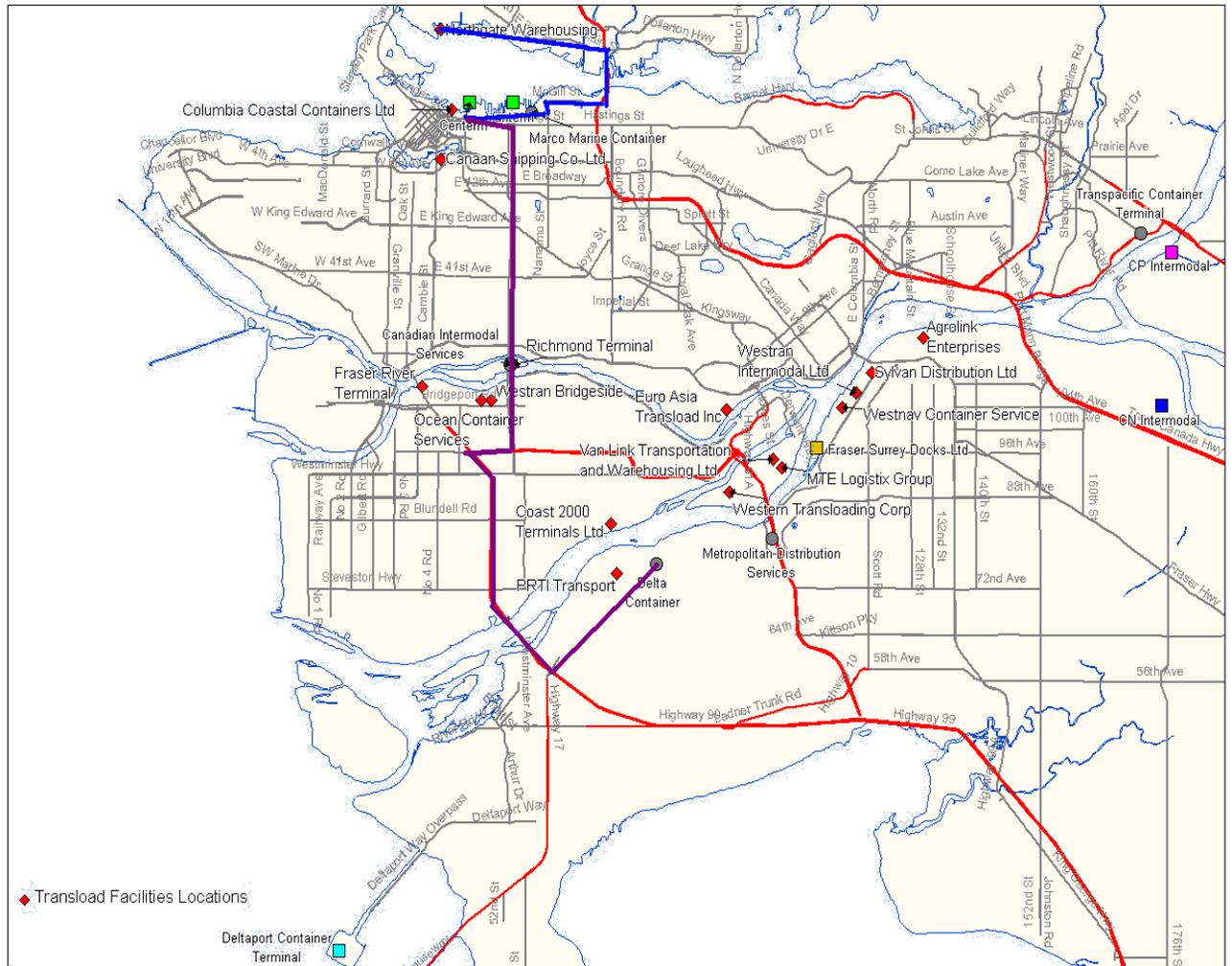
This helps offset the additional cost of gate charges to the shipping lines (approximately \$35 per container each way, in and out) and storage at off-dock facilities. It appears, however, that the increase in off-dock storage to date has been primarily dictated by short-term congestion problems at the terminals. From the limited data available to the Task Force, there appears to be no firm evidence of a sustained reduction in the container terminals' inbound empty gate transactions. The increase in off-dock storage has been reflected in increases of gate transactions at some of the off-dock facilities. From an informal telephone poll, it appears that increases in average gate transactions among the off-dock facilities have ranged from 20% to 400% over the last year and a half or so.

The move to off-dock storage of empty containers has led to serious problems for owner-operators, in part due to increased inefficiency in trucking operations and in part due to the failure of the industry to adapt its rate structure to the new trip patterns.

The inefficiencies arising from off-dock storage of empty containers include an increase in trip lengths, and queuing delays at the off-dock facilities where empties are stored. The traditional trip patterns in the drayage industry were based on round-trips to the terminals, and the presence of empty containers at the terminal allowed them to balance their trips (i.e. to drop off an empty and pick up a loaded container, or drop off a loaded container and pick up an empty). The new pattern can result in lengthy detours to pick up or drop empty containers at off-dock locations. The problem is compounded by the fact that empty containers for each shipping line are usually stored at a single location on the basis of a contractual arrangement between the shipping line and off-dock facility. Consequently trucks may have to travel to a distant off-dock facility rather than one nearby. An extreme example of this is the case of transporting loaded export containers from a facility in North Vancouver to one of the Inner Harbour terminals, and being forced to drive to Delta Containers in Delta to pick up an empty to complete the round trip. The relative distances can be judged from the map below. The loaded trip to the terminals is indicated by the blue line; the "third leg" to pick up an empty container by the purple.

## The “Third Leg” Problem: Round Trip to Inner Harbour from North Vancouver via Delta

Figure 13: Illustration of the “Third Leg” Problem in the Lower Mainland



Due to the structure of the existing trip-based compensation system, the owner-operator receives no compensation for the “Third Leg” movement.<sup>9</sup> The owner-operator’s compensation is based on the rate between North Vancouver and the Inner Harbour terminals. The problem is compounded if he encounters additional queuing delays at the off-dock facility. Trucking companies and owner-operators have indicated that queuing delays at off-dock facilities are often of the same magnitude as those experienced at the deep-sea container terminals.

During negotiations with trucking companies during the dispute, the Vancouver Container Truck Association owner-operators had as one of their demands a restructuring of the compensation

system to reimburse them for empty miles traveled. This was rejected by the trucking companies, and is not included in the current Memorandum of Agreement.

The move to off-dock storage has also complicated the management of shipping lines' empty container inventory, which is now more widely distributed. Trucking companies and owner-operators have expressed concern that they are sometimes unable to complete pickups of empty containers because shipping lines have overbooked their inventory at a specific location.

## **Ports Best Practices**

Ports throughout North America are all struggling to accommodate rapid growth in container traffic. Many have experienced trucking disputes similar to those that have occurred in the Lower Mainland. In order to investigate the means by which other ports have adapted, the Task Force engaged IBI Group to undertake a survey of best practices at certain North American and offshore ports.

Examples of best practices are listed below. The key element that almost all share is the need for coordination among all of the participants in the system, on and off the docks.

## **Extended gate hours**

The implementation of regular extended truck gate hours at container terminals has emerged as the single most effective method for reducing delays for trucks accessing the terminals. Best practices among ports surveyed included:

- Port of Montreal: The Port of Montreal handled 1,226,296 TEU's in 2004 (loaded and empty) or 760,837 boxes (20' or 40'). Most of this traffic is handled by Montreal Gateway Terminals at two separate container terminals - Racine and Cast. Both are common user terminals and are under the same management structure and information systems but serve different container lines. Montreal Gateway Terminals operates Monday to Friday from 6:00 am to 11:00 pm. Montreal Gateway Terminals increased truck gate hours by moving the closing time from 4:00 pm to 11:00 pm in April of this year (2005) to relieve truck congestion at the two terminals. After a slow start, approximately 18% of the gate transactions now take place in the 4 to 11 time period and this percentage is expected to further increase to closer to 25% in the near term. Mostly, the long-haul operators have taken advantage of these extended hours. Queuing delays are currently minimal (as long as the weather does not interfere and shipping lines are on schedule). Wait times of 5 to 10 minutes are now the norm while the terminal checks the paperwork submitted by the driver. Dwell times inside the two terminals are 30 minutes on average.

- PierPass in Southern California: The San Pedro bay Ports of Long Beach and Los Angeles are, in scale, complexity, and orientation, in a class of their own.

The two ports are similar in container throughput, and combined were at the 13.1 million TEU level in 2004, up 38% over five years. They have more container capacity than Vancouver, Seattle, Tacoma and Oakland combined. In 2004, approximately 2.4 million, or 18% of containers moved through the two ports on direct, on-dock rail services, in addition to near-dock or off-dock (Intermodal Container Transfer Facility) services.

The Port of Los Angeles has eight and Long Beach seven major container terminals, serving all of the transpacific ocean carriers. Of these, seven with on-dock rail have direct access to the Alameda Corridor, a 20-mile express railway connecting the Port to the rail hubs in downtown Los Angeles. The terminals are a mix of general user and shipping line-dedicated facilities. There is also a mix of wheeled and grounded operations, with the newer, less space-constrained facilities (such as Maersk/APM's Pier 400) generally mostly or even all-wheeled operations.

The threat of State legislation imposing peak hour service fees resulted in the terminal operators developing an extended gate hours system, combined with a charging and reimbursement scheme for the additional cost incurred. Known as OffPeak, and administered by PierPass, a special-purpose, not-for profit entity, the system went live in July 2005 and involves:

- i. A Traffic Mitigation Fee of \$40 per TEU being collected from the beneficial cargo owner (shipper/agent);
- ii. A refund being given for containers using off-peak gates (defined as 5:00pm-3:00am and weekends); and,
- iii. Exemptions for empties, domestic cargo and Alameda Corridor container exemptions.

The terminals have introduced five additional shifts per week at off-peak hours, and have seen the proportion of containers moved off climb from around 18%, to over 40% (the target) in many terminals. The charges levied are intended to offset the costs of additional operations (some \$160 million annually) arising from new shifts. In 2004, a revised International Longshoremen's & Warehousemen's Union labour agreement resulted in the hiring of an additional 3,000 casual, non-registered long shore employees at the two ports, and promotion of 2,000 casuals to registered employees, bringing the total to almost 15,000 workers. There is a general consensus that the industry-developed solution provided better accountability and financial transparency than a public sector levied and administered charging system. With PierPass/OffPeak and extended gate hours in place, feedback from terminal operators indicates that truck queues are no longer much of an issue at the ports involved.

## Development of open architecture common user information systems

Common user information systems can speed processing of gate and terminal transactions by integrating necessary information for all participants.

Port of Montreal: Port users can access an extranet system - a private electronic network separated from the Internet by a firewall - called Netgate that allows all truckers (with the appropriate password and container ID number) to find out the status of a container and if it has been released for pick-up. Through this system, trucking companies know the location on the terminal of the container to be picked up and can directly proceed to the container location and request the terminal to load the container onto its truck.

eModal: eModal is a third party service provider used at US West Coast ports to facilitate information exchange between system participants. The company has several products which offer users the ability to:

- make appointments for the terminal gate, using eModal *Scheduler*;
- query container and booking status at participating terminals;
- pay terminal fees online with a *Fee Payment* tool; and,
- register truckers in *Trucker Check* and comply with Marine Terminals Security Facility Plans. (Note that this facility enables truck owners to register with multiple companies, and for companies to deactivate inactive truckers, thereby eliminating the potential over-counting of truckers serving the ports, as seems to have been the case with the Vancouver Port Authority registration scheme).

Participating truckers must be registered. eModal's current products have been developed alongside the terminals' own operations software (NAVIS, VOYAGER TRACK, FORECOURT, etc) to provide a one-stop entry portal for trucking companies, rather than the proprietary front-end of the terminal operators' websites. The research phase in the development of this product involved extensive involvement from the terminals and trucking companies; they had a major hand in the look and feel of the product today. The products are highly customizable, but the *Scheduler* (truck appointments) product consciously always has the same front-end look, and layout. Participating terminals can use the eModal software in conjunction with their own software (or managers' knowledge of the optimal use of resources in the container yard) to match truck arrivals with the needs inside the gate, and can manipulate parameters – the number of zones in the terminal (up to 100), the number of trucks in each zone, for example, to suit their needs.

## **Enhanced operating coordination among participants in the system**

Port of Montreal: The Montreal Port Authority serves as a facilitator to ensure that all stakeholders in the port operate as efficiently as possible. For example, as operator of the port terminal railway, the Port Authority ensures that train operations do not interfere with either trucking or terminal operations. The Montreal Port Authority is a member of a coordination committee started in 1997 (it also includes the terminal operators, Canadian National Railway, and Canadian Pacific Railway) that meets twice daily by telephone conference call of operating officers to go over any emerging issues or problems that may need resolution.

## **Application of advanced technology – ITS applications**

US West Coast: Terminals at US West Coast ports have been installing a wide variety of advanced technology applications following changes to the International Longshoremen's & Warehousemen's Union contract signed in 2002 which facilitated adoption of these innovations. Automated entry gates have become the norm. These are equipped with optical character recognition readers to identify container, chassis and truck, and swipe card readers for driver identification. The port terminal operations and reservations software firm eModal is developing with PierPass a system to have all registered truckers use a radio frequency identification tag to meet United States Coast Guard security requirements. eModal are ordering 10,000 such tags for Ports of Long Beach and Los Angeles truckers. Rollout is scheduled for January 2006.

## **Virtual Container Yard**

eModal has developed a new product, *BoxTrade*, at the request of the Port of Long Beach, to integrate empties into the inventory of containers in the system, whether they are time-sensitive (say, export-bound, with a specific load), or simply repositioning moves. The Port of Long Beach has put up the seed funding for the Virtual Container Yard project and the Port of Long Beach has also come on board. By some estimates, more than 1,600 truck trips serving the ports daily can be eliminated. A billing system involving the steamship lines, shippers, operators, will be developed to make the system viable. Once the system is up and running, the trucker will have the same level of information currently available about container locations (such as a zone within the terminal) for off-dock facilities as is currently provided at the terminals.

## **Off-dock empty storage**

Port of New York/New Jersey: Maher Terminals has set up a unique inland facility to store excess empty containers. The satellite terminal is a direct extension of the marine terminal and both are electronically linked. Maher Terminals allows only empty containers onto its marine terminal that will be loaded onto a vessel within a two-week period. Each steamship line has a

quota of empties based on the total volumes handled for each line. There is rarely any physical movement of empty containers between the two facilities. Truckers know in advance to which facility they are to deliver the empty. Empties stored at the satellite terminal are used when needed for loading cargo to be exported or to be used in domestic service by the steamship lines for repositioning to another port.

Port of Houston: The Barbours Cut Container Terminal is a five-berth common user facility except for one private berth operated by APM Terminals that serves Maersk Sealand vessels. APM Terminals handles about one-third of the Barbours Cut Container Terminal volumes; the remaining two-thirds are handled by other stevedoring firms that lease the premises from the Port of Houston Authority. The Barbours Cut Container Terminal is strictly a grounded operation. The Barbours Cut Container Terminal has made arrangements (for non-APM Terminals traffic) to store empty containers off-site to relieve capacity constraints at the marine terminal itself. Third parties operate at four separate locations for the storage of the empty containers, all within a mile of the marine terminal. Containers are also cleaned and repaired at these sites. The empty containers are transported by marine terminal chassis over the private port road network to/from the storage facilities. The costs for this transfer operation are absorbed by the stevedoring companies who in turn then include it in their package of charges to the steamship lines. The operators of the empty storage facilities charge the steamship lines directly for their services. The Port of Houston Authority has set up service standards for the third party operators because there had been some issues in the past with regard to poor service; rates were too low due to the high competition between the third party operators for the steamship line empty container business.

### **Institutional solutions – trucking issues**

California Ports: The California State legislature has passed legislation regulating a number of aspects of port-related trucking activity. In 2002, California Assembly Bill 2650 imposed fines on container terminals that force trucks to queue longer than 30 minutes outside terminal gates. The legislation permits terminals to adopt either gate appointments or off-peak operating hours as a means of avoiding fines for truck queues. These exemptions were instrumental in facilitating the adoption of reservation systems by container terminals, and in extending gate operations at selected terminals. The threat of subsequent legislation charging premiums for the pickup of containers during peak hours was the key motivating factor leading to the development of the OffPeak program for extending gate hours at all international container terminals at the Ports of Los Angeles and Long Beach. In addition, new trucking fairness legislation, has recently been signed into law; this act restricts the ability of shipping lines to penalize truckers for delivery delays, and attempts to ensure that revenue generated from surcharges intended to cover trucking costs (i.e. fuel surcharges) is passed through to the trucking industry.

Quebec: In 2000, the government of the province of Quebec passed Bill 135 setting up a Trucking Consultative Forum. The Forum facilitates discussions between owner-operators and companies. It has developed a standardized contract for use by owner-operators, a costing model to assist owner-operators in estimating their costs of providing service, and a mediation and arbitration mechanism.

## **Central reservation systems**

From our research, it appears that few terminals in North America currently rely on a reservation system as a key element in optimizing their efficiency. The importance of reservation systems is, however, expected to increase in the future in response to the need to improve the efficiency of the utilization of ports' limited land base, which will require the stacking of containers on the ground ("grounded") as opposed to storage on chassis ("wheeled"). Among the Southern California terminals, the Seaside Transportation Services (Evergreen) terminal at the Port of Los Angeles, which is a partially "grounded" operation, appears to have the highest rate of reservation use. Approximately 30% of transactions at Seaside Transportation Services are carried out under the appointment system. Of these, approximately 70% are completed within the allotted 2 hour time window.

## **Build capacity and knowledge base within the Port community**

Southern California: The METRANS Transportation Center provides a mechanism for applying the expertise of academic institutions to practical gateway transportation issues. The METRANS Transportation Center University Transportation Center was established in 1998 by the US Department of Transportation through the *Transportation Equity Act for the 21st Century*. METRANS is a joint partnership of the University of Southern California and California State University, Long Beach. Federal funding is matched by the California State Department of Transportation. METRANS' mission is to solve transportation problems of large metropolitan regions through interdisciplinary research, education and outreach. The main focus is goods movement and international trade, accounting for about half of all METRANS research and most of METRANS outreach and information dissemination activities. METRANS research projects include many topics of direct relevance to issues of port efficiency, including trucking issues, and provide a rich source of background information for addressing goods movement issues.

## **5. Discussion**

### **Context Of Discussion**

The submissions and research make it clear that the Pacific Ports are critical links for Canadian industry and business in the global economy. Disruptions in port services impact a broad range of stakeholders, most of which are not direct participants and have no ability to resolve the disruption. The direct costs of the recent disruption and the indirect cost of the loss of reputation of the Port Authorities are significant.

Moreover, the projected growth in container traffic is very significant and offers local ports and the region a major opportunity for economic growth. As noted, the Port Authorities must establish and maintain a reputation for efficiency and reliability if they are to

gain an appropriate share of the growing container market. In a recent delegation to China, both the federal Minister of Transport and the provincial Minister of Transportation heard concerns about work disruptions directly from Chinese officials.

However, the Port Authorities' logistical system is highly complex, with a number of institutional and private sector participants that operate largely independently; coordination of interests across these participants is limited. Decision-making by the various participants does not necessarily produce the most economic overall system, and tends to move costs to the owner-operators. The truck owner-operators are the group least able to respond to these changes and to changes in the general economy that impact their costs, such as the cost of fuel. The nature of the operation, the low cost of entry, and the owner-operators' inability to establish revenues appropriately result in a situation where the market does not operate effectively. The previous sections have highlighted problems in the drayage industry, including increased fuel cost, decreased efficiency, and reduced margins. Inefficiency in the drayage industry has potential broader community impacts including increased traffic congestion and vehicle emissions.

The operating problems in the local ports are far from unique. Most North American ports with significant container trucking face similar issues. This was the case in the dispute in the Port of Montreal in 2000 and in recent (2004) disputes in US ports. The problems at these ports are described in virtually identical terms, and a recent US study clearly identified the problems associated with trucking services provided by owner-operators. A California senator recently submitted proposed legislation, endorsed by the Teamsters Union, to permit unionization of owner-operators. California has also passed legislation (for air quality reasons), which penalizes terminal operators for delays in which trucks are left idling in excess of a specified period.

The present Lower Mainland container-trucking situation created pursuant to the Memorandum of Agreement is fragile. A legal challenge to both the Orders-In-Council and to the Memorandum of Agreement/port licensing structure is currently underway. While the Orders-In-Council authorize the rate structure and licensing system for a 90-day term, there appears to be an argument that the arrangement will violate the *Competition Act* at the end of the 90-day period. If, however, the Memorandum of Agreement and licensing scheme are found to be valid for participants who entered into the agreement during the 90-day period, there is a further argument that no new entrants could be permitted after that time under the licensing scheme without offending the *Competition Act*. Conversely, a failure to admit new companies may in itself be a violation of the *Competition Act*.

The arrangements and payment systems that are in place between trucking companies and owner-operators are sufficiently informal that enforcement of the rate structure may be challenging. Existing reservation systems that were intended to minimize delays to truckers are ineffective. The current fragmented dispatch systems work against efficient truck operations. The move to off-dock storage of empty containers has lengthened truck trips and increased costs without increasing compensation.

## **Operating Environment**

The Task Force believes it is necessary to create an operating environment in which the chance of disruption is minimized and effective mechanisms are put in place to deal with disruptions that may occur. There are two complementary approaches to establishing such an environment. The first approach establishes an appropriate minimum rate of compensation; an effective enforcement regime to maintain that compensation for those owner-operators and employee drivers who are not unionized; and appropriate labour relations provisions to ensure that both legal and illegal disruptions are managed appropriately with minimal impact on port operations. The second works to ensure that the overall port operation is efficient, and that such matters as gate open hours, reservation systems, and advanced technology are implemented in a way that considers the overall operation of the port and the impact of such decisions on all parties.

## **Regulation, Licensing Systems And Labour-based Solutions**

The trucking sector could be unionized, and a higher degree of stability would be achieved. Most expert commentators (and a legal opinion obtained by the Task Force) agree that the majority of the owner-operators would be considered dependent contractors and therefore could organize. The labour jurisdiction (federal or provincial) question is ambiguous but the preponderance of the evidence leads the Task Force to believe that federal jurisdiction is most appropriate. Indeed, unionization is underway, and Canadian Auto Workers Union applications for certification covering more than 30 firms and several hundred owner-operators are now being assessed. However, there is so far no evidence that employers are willing to grant bargaining authority to an employers' association.

Sectoral bargaining could be implemented. To make such an option work, it would be necessary for us to recommend that the drivers be compelled to unionize and establish a mandatory council of trade unions as well as a mandatory employers' organization. The Task Force notes that such an arrangement could be reached voluntarily by the truckers and by the companies if some matters, such as jurisdiction, are dealt with. The Task Force believes, however, that a decision to impose sectoral bargaining would create an institutional rigidity that would give too much power both to the truck drivers and to the trucking companies. Because no one could compete with those who were part of the system, it would result in increasing the costs of trucking as both the drivers and trucking companies would benefit directly from higher rates. As a consequence, there would be limited countervailing pressure on the parties.

The current licensing scheme could be maintained. We have received legal advice indicating that while the Port Authorities have the authority to continue the current licensing scheme, such a scheme would most likely offend the *Competition Act*. However, the current licensing scheme requires that license holders sign the Memorandum of Agreement, which is for a two-year term. The necessary mechanisms for establishing future compensation levels are not in place. The current licensing scheme does not create an enforceable obligation on drivers not to disrupt port operations. Further, other sections of this report consider operational improvements that should

be put in place that could restore or increase the efficiency of container trucking in the ports; the current licensing scheme has no capacity to adjust compensation levels downward in that event.

The licensing scheme could be eliminated, leaving the short haul container-trucking sector to the operation of the market. However, the task force believes that the structure of the sector will almost certainly lead to market failure in future, as has been the case in the past, leading ultimately to more disruptions, with very adverse impacts on some sectors of the Canadian economy and the loss of the reputations of the Port Authorities for timely service. While this option would satisfy those who clearly support maintenance of deregulation in the sector, the Task Force believes that this action would immediately destabilize the industry. Given the importance of port operations, and the recognition that the current Memorandum of Agreement/licensing scheme was not an inappropriate step to restore those port operations, the Task Force believes it would be irresponsible to make such a recommendation.

There is no rate setting and labour relations solution that will gain unanimous approval from all stakeholders. The retail and shipping organizations argue against any industry-wide rate setting process and for a fully deregulated environment, with strong enforcement against any illegal disruption. Even some who accept the necessity of the intervention by governments in the short term argue against maintaining mandated rates and a licence system to enforce them in the long term. Long-term continuation of a deregulated approach would not be supported by the union movement, or by the Vancouver Container Truck Association, who argue for a limitation on the supply of trucking services, organization within the sector, and a sectoral approach to bargaining. The Vancouver Port Authority and Fraser River Port Authority, which would be responsible for operating any licensing scheme, have argued that insofar as it seeks to regulate compensation for trucking, such a licensing scheme is an inappropriate longer term solution.

The Task Force believes that the recommendations of this report related to labour relations and compensation for short haul container truckers should establish a workable regime that will to the extent possible:

- ensure continuity of port operations and efficiency of container movements within the port system;
- prevent the current Memorandum of Agreement from collapsing either through legal challenge or a simple failure to work;
- prevent the reoccurrence of the dispute;
- provide a means to establish fair minimum compensation for short-haul container truck drivers; and,
- target remedies to the port container trucking system so that any recommended solutions do not have unintended consequences for other industries.

While the present licensing scheme does not achieve all these objectives, it has achieved stability at least in the short term. There are significant strengths in the Memorandum of Agreement, including a dispute resolution process in the hands of experienced labour arbitrators, and the existing

relationship between Messrs. Ready and Cameron and the parties. The Task Force believes that a modified licensing scheme and appropriate legislation to address the restrictions imposed by the *Competition Act* could retain the strengths of the present licence system while addressing some of its failings.

### **Operational Improvements**

The second of the complementary approaches - operational improvements in the port sector - could increase efficiency in the short haul container trucking sector, which would reduce the pressure on the compensation system, as well as increasing overall efficiency in the ports. Previous sections of this report have identified that improvements such as longer gate hours can improve productivity. A system-wide reservation system has the potential to reduce trucking costs. Automation and the implementation of new technology such as optical character recognition, radio frequency identification tags, and industry-wide information systems could improve both operations and security. Systems that extend across the industry and provide a commercial methodology for sharing costs and benefits appropriately can provide significant benefit – PierPass in California is one such system.

The implementation of system-wide improvements is challenging. Despite specific objectives and significant efforts led by the Port Authorities following the 1999 disruption, relatively little has been achieved. Significant analytical efforts are necessary, and corporate commitment, including funding, is required. Attempting significant system-wide change without adequate technical and organization resources will not be successful. However well intentioned and competent, officials who attempt to address such issues “off the corner of their desk” will face huge challenges – dedicated resources are required.

The Task Force had neither time nor resources to undertake extensive analysis of the options available for operational improvements. The issues are technical and challenging, and the cross-organization nature of the solutions requires extensive consultation to identify the best solutions, and consensus building to achieve broad agreement.

In developing its recommendations relating to operational efficiencies, the Task Force therefore focussed its consideration of these issues in a few areas, and on systems and structures that may help achieve such improvements in future. In the area of labour relations and compensation, the Task Force believes that market failures have occurred in the absence of some form of regulation, and are likely to occur again. The Task Force faced a related question – what kind of structure could achieve an appropriate long term compensation system without offending the *Competition Act*.

### **Legislative Frameworks**

In considering the two questions noted above, the Task Force examined structural and legislative frameworks to address the efficiency and competitiveness of the Pacific ports; labour relations issues; remuneration; ways to manage the potential for disruption to port operations; and working

within the constraints of the *Competition Act*. Two options were identified; one exclusively federal in structural and legislative terms, and one requiring joint federal and provincial action.

The Task Force believes that central issues related to container trucking in ports are federal in nature. Arguably, the short haul container trucking operation is vital and integral to the (federal) port system. The Canadian Industrial Relations Board has said as much in one of its rulings on a related issue. The *Canada Marine Act* provides the Minister with significant capacity to direct the ports via Supplementary Letters Patent. The Port Authorities have capacity through their relationship with terminal operators and others utilizing port lands, including truckers servicing terminals, to impose significant regulatory constraints. Federal instructions to the Port Authorities could ensure that mechanisms are put in place to establish appropriate compensation levels and conditions for access to the Port Authority lands, and federal legislation could exclude such regulation from the ambit of the *Competition Act* to the extent that may be required. The Port Authorities could provide leadership in implementing new technologies and sector-wide operational improvements. The federal government could ensure through legislation that a regulatory environment for compensation of port truckers would be excluded from the restraints of the *Competition Act*.

The Task Force also noted, however, that transportation is an area of shared jurisdiction; that the provincial government has indicated significant interest in ensuring an efficient and competitive port system through its Port Strategy; and that certain areas where efficiencies may be achievable fall within provincial jurisdiction. Senior officials of the Competition Bureau advised the Task Force that provincial legislation could create a regulated exemption to the *Competition Act* if the rationale for regulation was compelling and legislated provisions were appropriate.

The Task Force believes that both these conditions could be met. Provincial legislation could establish an agency that would:

- support collaboration across all modes and among all stakeholders in the logistics chain to implement global best practices;
- maximize cargo and passenger traffic;
- enhance the competitive position of the Gateway;
- address gateway-wide communications and marketing issue;
- address labour-force development and policy issues;
- flow directly from the recently released BC Ports Strategy and clearly be within the province's legitimate area of interest; and,
- provide the necessary technical resources to address issues of appropriate trucker compensation levels.

A number of stakeholder interest groups would be created and those stakeholder groups would

nominate independent directors to a Board. One of the stakeholder groups would include appropriate representatives of agencies with an interest in trucking. The stakeholder group and staff or professional advisors would make recommendations to the Board, which would make the legal decisions related to trucker compensation.

Among broader objectives to enhance the operation of the ports, the legislation would establish criteria for establishing a compensation regime along the lines of:

- not greater than rates established in collective agreements for similar work;
- permitting competitive rates for services in the BC ports relative to other Pacific ports; and,
- providing a reasonable income to drivers and owner-operators.

Establishing an agency under provincial legislation that would fulfill the regulatory role with respect to trucker compensation within the larger Ports Strategy while addressing questions of efficiency and cross sector integration could be appropriate, given the related technical issues and common interest groups.

In developing its recommendations, the Task Force assessed whether or not either of the above models could be expected to achieve the desired result. Their strengths are different. The federal system is simpler by virtue of not requiring coordination between governments, and because it provides a more certain exemption from the limitation of the *Competition Act*. The joint system reflects the stated interest of the Province in facilitating a highly efficient port system, and provides a greater certainty that dedicated resources will be applied to cross-sectoral issues.

The Task Force believes that either approach could be successful. Both would require funding to ensure that adequate resources are applied to the challenges, and the Task Force believes that the federal and provincial government, the ports, and the private sector should contribute to the funding requirement. Given the availability of funding and commitment by all participants, the choice between these legislative options is a matter of government policy choice, and as such is outside the Task Force mandate.

## **6. Recommendations**

The Task Force was directed to respond to a number of specific directions, as set out in its terms of reference. Having considered the submissions it received and the results of its own research, the Task Force has reached a number of conclusions. The elements of the Terms of Reference (in italics) and corresponding recommendations of the Task Force are set out at a general level immediately below. More specific comments are provided in subsequent sections.

### **Terms Of Reference #1**

*Examine and make recommendations on the roles of affected port authorities, brokers, freight-forwarders, shippers, trucking firms, truck owner-operators, as well as the provincial and federal governments with regard to optimizing efficiency in the movement of containers in the Lower BC Mainland, including movements into and out of the ports of Vancouver, Fraser River and North Fraser;*

The Task Force notes that the ports are part of a complex logistics chain, and that coordination between the many players in the system is essential. The Task Force is making a number of specific recommendations related to improving the efficiency in container movements at the Vancouver Port Authority and at the Fraser River Port Authority. The Task Force believes that the North Fraser Port Authority can and should be excluded from its recommendations, since that port's role in container movements is limited and the recent disruptions did not impact on its operations.

### **Terms Of Reference #2**

*Examine and report on possible synergies and optimization in the operations of the various port authorities, including such elements as 24-hour services;*

The Task Force has recommended that terminal operating hours should be increased beyond the current single shift operation until the current congestion experienced by truckers at terminals is significantly reduced. Coordination between the Vancouver Port Authority and the Fraser River Port Authority is essential for benefits to be obtained from implementing changes in operating hours.

### **Terms Of Reference #3**

*Examine and provide recommendations on the enforceability, by way of licensing or other effective mechanisms, of any standards for remuneration and other conditions, including the application of such standards to companies who are not part to an agreement on remuneration; the potential impact of new entrants; and corporate restructuring (successorship), and on the mechanisms required for any recommended licensing regimes to be established and enforced at the ports of Vancouver, Fraser River and North Fraser, including access compliance;*

The Task Force believes that a market failure has occurred in the Lower Mainland container-trucking sector, and that accordingly, standards for remuneration are necessary to address issues in the operation of the market for supply of trucking services, and that enforceability is required across the market place. The system must be sufficiently robust to manage the impact of new entrants and the potential for corporate restructuring, without limiting competition so much that the setting of standards for remuneration is not reflective of market forces. Recommendations on the establishment of a licensing regime are provided.

#### **Terms Of Reference #4**

*Examine costs and possible impediments and inefficiencies in the movement of containers, including wait times and dispatch procedures, within the Lower British Columbia Mainland;*

The Task Force has concluded that decision-making within various sectors of the overall port logistics system has led to inefficiencies in the trucking sector, requiring the absorption of costs by truckers. Wait times are excessive; the task force believes that an improved reservation system and possibly centralized dispatch could increase efficiency in the trucking sector and overall.

#### **Terms Of Reference #5**

*Examine and provide options and recommendations regarding legislative and/or regulatory frameworks available to the federal and provincial governments and how these may be applicable;*

The Task Force has identified two alternate approaches to legislative frameworks to support an appropriate model for managing the implementation of remuneration standards and to support increased efficiency in port operations. Both approaches implement similar directions, with somewhat different emphases. One regime is exclusively federal; the other is a shared federal-provincial model, utilizing provincial legislation to establish a mechanism for setting standards of remuneration and operating terms, and for achieving a higher level of cooperation and coordination across the logistics chain.

#### **Terms Of Reference #6**

*Examine and report on best practices at other ports and how they may apply in these circumstances;*

The Task Force has examined practices at other ports through a commissioned study conducted by IBI Group, and based on interviews and research conducted directly by the Task Force Secretariat's Director of Research. This work has indicated that increasing hours of gate operation at terminals (including the possibility of a mechanism to share the cost across users) may represent good practice; that a reservation system may provide benefits across the system; and that system-wide implementation of technology and information systems could provide significant benefits. It is clear from our research that advanced technology is a driving force in achieving world-class productivity in port operations both on and off the dock. There are many examples identified in our best practices research, including development of open architecture common user information systems; installation of intelligent transportation system technologies such as optical character recognition, global positioning systems, and radio frequency identification applications; and development of a virtual container yard to facilitate more efficient transfer of containers between importers and exporters.

## **Terms Of Reference #7 & #8**

*Examine the industrial relations between the trucking companies and container truck drivers serving the ports of Vancouver, Fraser River and North Fraser, including the process for determining rates and other contract terms and conditions and the process for resolving disputes; and*

*Examine other outstanding issues of representation.*

This Report provides a number of recommendations respecting representation, the process for determining rates and other contract conditions, and on dispute resolution.

## **Specific Recommendations**

The Task Force submits the following recommendations, all of which the Task Force believes are appropriate, notwithstanding the legislative model governments may choose to implement. Where the mechanics for implementation of the recommendations differ between the federal and shared legislative models, the differences are described within each recommendation.

### **Recommendation #1**

***The federal and provincial governments should work together to create the capacity for analytical work and consensus building throughout the port sector to implement best practices. Governments should provide two years start-up funding and seek agreement among the Port Authorities and private sector agencies to provide funding for this work over the long-term.***

After its significant involvement in this assignment, the Task Force is emphatic that adequate resources must be focused on the implementation of best practices. The problems are complex and inherently involve multiple parties. There is a tendency for all the agencies and organizations involved to look to others for the necessary leadership and commitment of resources. While the improvements best practices can offer should generate savings that would provide financial support for the required work, this will not be the case in the initial years. Accordingly, the Task force has identified the need for both funding and leadership as central to achieving the required improvements. While the mechanics would be different in a federal legislated model and a joint model, the objective and the challenges would be the same.

Just prior to the Task Force reporting deadline, the federal government announced its Pacific Gateway Strategy. Part of that strategy funds an advisory committee to undertake analysis and make recommendations to the federal government on priorities. That proposal, while attractive and useful, does not address the issues covered by this recommendation. Where the federal committee is dealing across the four western provinces, the focus here would be on British Columbia facilities and issues. Where the federal committee would necessarily consider high

level issues and policies and major infrastructure, the analytical capacity and consensus building described here would deal with operational issues and practices, and such questions as land banking and specific local obstacles to building the right infrastructure and implementing best practices. The new federal gateway Committee should be seen as complementary to mechanisms recommended by the Task Force.

## **Recommendation #2**

***The federal Minister of Transport should direct the Port Authorities to adopt a licensing scheme for companies and drivers involved in the short-haul transportation of containers to and from the Lower Mainland ports, in order to manage the number of drivers and vehicles, and to ensure fair compensation for drivers.***

A great deal has been said about the authority of the Government of Canada to issue the Orders-in-Council which are currently in effect and which are referred to earlier in this Report. Under our Terms of Reference, we have been directed to provide recommendations on the enforceability, by way of licensing or through other effective mechanisms, of any standards for remuneration and other conditions for the owner-operators.

Many of the written submissions were not too helpful on this point – urging us in effect to provide no mechanism whatsoever, and to “let the market determine” rates and working conditions. Such a recommendation would not be consistent with our Terms of Reference. Moreover, in our view a *laissez faire* approach would bring us back to the circumstances that lead to the recent dispute, and would risk unacceptable instability in the ports. The validity of this concern was reluctantly acknowledged by some of the presenters of the above submissions in their oral presentations.

Having taken account of all of the submissions, we hereby recommend the following licensing system, to take effect on the expiry of the above-referenced Orders-in-Council:

The Port Authorities will establish a new licensing scheme to replace the existing licences. Two types of licences will be issued. An owner-operator will be required to hold one licence to cover him or herself and his or her truck. Companies providing drayage services by means of employee-drivers, owner-operators or both will be required to hold one licence which will cover a specified number of specific trucks driven by employee-drivers (if any), and a specified number of owner-operators (if any).

The Port Authorities will determine criteria for exemption from the requirement to obtain a licence for drivers involved in long-haul transportation and in transportation other than by container, and for emergency situations.

Initially, any company owning trucks and providing short-haul container transportation services as of October 26, 2005, will be entitled to a number of licences equal to the number of trucks used substantially in providing those services. In addition, any owner-operator

substantially engaged in providing short-haul container services in 2005 before October 26 is entitled to a licence.

Under a federal model, the ongoing determination of the policy and the application of that policy for issuing, renewing and rescinding licences will be managed by the Port Authorities and by the Licence Adjudicators, as set out in the following paragraphs.

Given that Messrs Ready and Cameron will have a continuing adjudicative role pursuant to the existing Memorandum of Agreement, and have already established a relationship of credibility among the parties, the Task Force believes they would be appropriate Licence Adjudicators, at least for the remaining term of the Memorandum of Agreement. Should they be unwilling or unable to serve as License Adjudicators, their replacement(s) will be selected and appointed by the Minister of Transport. The License Adjudicators will work as independent adjudicators and shall establish their own procedures. They will have the status of arbitrators under the relevant Commercial Arbitration legislation. Their fees will be paid by the Port Authorities, except in the following circumstances:

- in a proceeding to determine that a company is in breach of the fair compensation standard the company may be ordered to pay the costs of the arbitration if the company is found to have breached the fair compensation standard; and
- in a proceeding to determine that an owner-operator has breached the terms of his or her license, the owner-operator may be ordered to pay the costs of the arbitration if the owner-operator is found to have breached the terms of the license.

Under a shared jurisdiction model, the mechanism for adjudication would be established by the legislated agency. The Task Force believes that retention of Messrs. Ready and Cameron to serve as adjudicators would be equally appropriate in that model.

Most observers believe that at present there are too many drivers for the current volume of containers, and that the excess number of drivers is itself a source of congestion. Despite this, it is not possible to limit licences only in accordance with those active in the drayage sector as of October 26, 2005, without introducing undue rigidity into the sector.

Aside from a significant increase in volume, there are two circumstances under which new entrants should be entitled to licences, and additional circumstances under which an existing licence-holder should be entitled to amend its licence. The Task Force believes these criteria provide a reasonable balance between excessive control over the supply of drivers and the requirement to maintain a competitive environment, and are appropriate under either a federal legislation or a shared jurisdiction model. Furthermore:

- the beneficial owners of goods should be eligible to receive licences for the purposes of picking up and dropping off containers related to the transportation of those goods (this eligibility will tend to protect customers from uneconomic pricing behaviour by companies and/or owner-operators);

- an applicant should be entitled to a licence if (1) the Port Authorities are satisfied that the applicant will be using a truck or trucks that will meet an exemplary standard for safety and environmental protection; and, (2) the applicant can demonstrate, to the satisfaction of the Licence Adjudicators, that despite the proposed increase in the number of trucks that would be using port facilities the applicant's operations will enhance the productivity of container transportation;
- where an existing drayage company is able to demonstrate to the Licence Adjudicators that it has attracted more business on a sustained basis, the company should be entitled to amend its licence to permit more trucks. Subject to any collective agreement constraint, it should be the company's choice as to whether the amendment would enable more company-owned trucks (and employee-drivers), or more owner-operators; and,
- where an owner-operator voluntarily leaves a company or is discharged for just and reasonable cause, the company (provided it still has the volume of business) should have the option to amend its licence to reduce the number of owner-operators by one, and to increase the employee-drivers accordingly. Subject to similar conditions, the company should be able to increase its owner-operators and decrease its employee-drivers in event of a vacancy in employee-drivers. Nothing in this paragraph is intended to override a collective agreement provision.

The Licence Adjudicators or legislated agency, as the case may be, will review the need for licences periodically, based on the volume of container traffic and the productivity of container transport. In the present period, it will be difficult to contain growth in the number of drivers, whereas the best number is probably significantly less than the present complement. If further analysis confirms that there are in fact too many drivers relative to container volume, the Port Authorities and the Licence Adjudicators should seek as much as possible to reduce the number of drivers by attrition, including reducing the licence allocation of companies who have an excessive number of licences relative to the volume of containers they are transporting (at some point, the anticipated increase in container volume through the ports will make it less difficult to achieve and maintain an optimal balance).

Licences will be renewable after an appropriate term, and will not be renewed if the Licence Adjudicators determine there is no substantial recent activity pursuant to the licence, or if the applicant for renewal is otherwise no longer eligible for a licence. Licences are non-transferable either from one company to another, or from one owner-operator to another. In particular, any company or other corporate entity that goes through a change of effective control by any means will lose its license.

Licences may be subject to a number of conditions designed by the Port Authorities to promote safety, security and environmental protection. The Port Authorities will be responsible for determining violations of those licence conditions.

To complement the recommendation elsewhere in this Report, that applicable labour legislation be changed to prohibit picketing at the ports where the companies are not

attempting to carry on business during a lockout or legal strike, company licenses should also include a provision for their suspension for the duration of a lockout or legal strike.

Company licences will be subject to a requirement to pay fair compensation to owner-operators and to employee-drivers of company-owned trucks. We recommend that:

- any drivers covered by a collective agreement will be presumed to receive fair compensation (and any disputes about compliance can be determined, and remedied if necessary, under the grievance procedure);
- from time to time the Licence Adjudicators or legislated agency will determine a standard of fair compensation for non-union drivers (with separate provisions for owner- operators and employee-drivers); and,
- the Licence Adjudicators or the legislated agency will also determine compliance with the fair compensation standard. As a condition of obtaining a licence, non-union companies and owner-operators will be required to agree to a binding dispute resolution procedure with respect to the application and alleged violation of the standard, including an obligation to disclose all information necessary to adjudicate a complaint. The dispute resolution procedure will include remedies, and in the case of egregious or repeated violations will result in a recommendation from the Licence Adjudicators or legislated agency to the Port Authority to cancel the licence.

Owner-operators' licences will be subject to a requirement that they not participate in any concerted refusal to work, or any interference with transportation to or from the ports, except as permitted by law. A procedure generally parallel to the one for companies will determine violations of the requirement, and will prescribe remedies that will include recommending to the Port Authorities, in appropriate circumstances, that they cancel the owner-operator's licence.

The Task Force notes that under these recommendations, the Port Authorities will not be responsible for determining the level of fair compensation or of compliance with that standard, nor will they need to determine the appropriate penalty for a violation of owner-operators' obligation to avoid illegal behaviour. Their role in these matters is limited to cancelling licences on receiving a recommendation to do so from the Licence Adjudicators.

In a shared jurisdiction model, the policies to determine the number of drivers and vehicles to be utilized and the setting of fair compensation would be established by an agency created under provincial legislation. The Port Authorities would require that truckers and trucking companies participate in the agency and provide input to the rate setting process as a condition of receiving a license.

***Please note: Brokers will be included in the definition of company for the purpose of these recommendations.***

### Recommendation #3

***The federal government should take certain specified actions to establish an exemption from the provisions of the Competition Act to apply to parties to the modified licensing scheme and the existing Memorandum of Agreement, or alternatively, that the federal government take certain actions as described in this Report and the provincial government establish the “regulated conduct exemption” by passing legislation to establish an agency with the specific authority to set compensation and conditions associated with eligibility for this work.***

Based on the submissions and the Terms of Reference, it appears clear that it is important to the economy of Canada that the flow of containers to and from the ports not be interrupted in a similar dispute in the future.

The Task Force believes that central issues in this field are federal in nature. Arguably, the short haul container trucking operation is vital and integral to the (federal) port system. The *Canada Marine Act* provides the Minister with significant capacity to direct ports via Supplementary Letters Patent. The ports have capacity through their relationship with terminal operators and others utilizing port lands, including truckers servicing terminals, to impose significant regulatory constraints. Federal instructions to the Port Authorities could ensure that mechanisms are put in place to establish appropriate compensation levels and conditions for access to port lands, and federal legislation could exclude such regulation from the ambit of the *Competition Act* to the extent that may be required.

However, the Task Force also noted that transportation is an area of shared jurisdiction; that the provincial government has indicated significant interest in ensuring an efficient and competitive port system through its Port Strategy; and that certain areas where efficiencies may be achievable may fall within provincial jurisdiction. During a meeting with senior officials of the Competition Bureau, the Task Force was advised that provincial legislation could create a regulated exemption to the *Competition Act* if the rationale for regulation was compelling and legislated provisions were appropriate. The Task Force believes that both these conditions would be met, and that establishing an agency under provincial legislation that would fulfill the regulatory role with respect to trucker compensation within the larger Ports Strategy while also addressing questions of efficiency and cross sector integration could be appropriate.

The Task Force believes that the choice between these options is a matter of government policy choice, and as such is outside the Task Force mandate.

We have been advised that it is possible to provide an arrangement between the parties, or to impose terms in the absence of agreement, with a ‘regulated conduct exemption’ to the normal operation of the *Competition Act*. We have also been advised that based upon a plain-reading of the *Canada Marine Act* it is possible for the Minister of Transport to direct Port Authorities to undertake certain actions provided those actions fall within the objects of the *Canada Marine Act* and that the letters patent are amended by supplemental letters patent. We therefore recommend that the Government of Canada take as many of the following steps

as it deems necessary and essential to ensure that any arrangement arising from this Report would benefit from such a regulated conduct exemption:

While the existing letters patent of the Lower Mainland Port Authorities already provide broad authority to impose a licensing scheme that controls access to those ports, for greater certainty those letters patent should be amended to expressly permit those Port Authorities to establish the licensing scheme contemplated by this report. That is, section 7.1 of the Port Authorities' letters patent should be amended to include the following wording, "*...the Port Authority is hereby authorized and directed by the Minister, for the purpose of promoting safe and efficient transportation of passengers and goods to and from and within the federal real property managed by the Authority and the real property other than federal real property occupied or held by the Authority, to license persons for access, which license shall include but not be limited to terms relating to duration, efficiency, safety, set or minimum rates of carriage and set or minimum rates of remuneration to be paid to persons engaged in the activities specified under the terms of the license.*"

- The Port Authorities Operations Regulations made under the *Canada Marine Act* should be amended to the extent necessary to authorize and direct a Port Authority to establish a licensing scheme as contemplated by this Report. That is, while section 7(b) of those regulations currently specifies that no person shall access any area managed, held or occupied by a Port Authority unless the person is authorized by the Port Authority to access the area, this section of the Operations Regulations should be amended to include the following wording, "*...and the Port Authority shall regulate the granting of such access by means of a license which shall specify but not be limited to terms relating to duration, efficiency, safety, set or minimum rates of carriage and set or minimum rates of remuneration paid to persons engaged in the activities specified under the terms of the license.*"
- the *Canada Marine Act* be amended as required in order to support the amendments to the regulations and the letters patent. That is:
  - i. the *Canada Marine Act* be amended to specifically provide for and enable the Minister to direct the adoption by Port Authorities of the licensing regime recommended in this Report; and,
  - ii. section 50.(2) of the *Canada Marine Act* dealing with exceptions with respect to commercially acceptable discrimination should be amended by adding the following phrase to the end of that sub-section, "*...or for the purpose of promoting safety, efficiency, protection of the environment, or enhancing labour relations stability.*"
- the *Competition Act* or other statute as appropriate be amended to specifically create an exemption permitting the licensing regime recommended by this Report without liability under the *Competition Act*, OR the provincial government pass legislation authorizing the agency it creates to establish compensation standards and criteria for management of licenses, which would then be implemented through the licensing procedure established by the Port Authorities.

The Task Force recommends that whatever action is taken by government to enable the licensing scheme recommended by this Report, it will also be important that government take measures to ensure that the existing Memorandum of Agreement, insofar as it applies to shorthaul container trucking, can also continue to function without offending the *Competition Act*, and that no person is exposed to criminal or civil liability under the *Competition Act* or the law of civil conspiracy with respect to any activity that commenced during the 90-day period of the section 47. Order-In-Council. We are advised that it is important that this be in place before the end of the period covered by any applicable Order-In-Council.

#### **Recommendation #4**

***The federal Minister of Labour should seek to clarify the status of the owner-operators for labour relations purposes and the appropriate jurisdiction (federal or provincial) over the owner-operators.***

From the outset of the dispute, the protagonists characterized the owner-operators as independent businesspeople who did not fall within any conventional labour relations regime. It was for that reason, that the Government of Canada took the action it did by adopting the Orders-in-Council which are described earlier in this Report. During the course of the work of the Task Force, we have uncovered a significant body of anecdotal evidence that could lead to the conclusion that the large majority of owner-operators are in fact “dependent contractors” under labour legislation largely because they appear to be economically dependent upon individual trucking companies for their income. We were informed that most of the owner-operators do not work for more than one trucking company and do not have significant sources of income outside the revenue received from their particular trucking company. There may, however, be an exception in circumstances where an owner-operator owns several trucks, in which case he or she may not fit within the definition of dependent contractor. We are informed that a significant number of applications for certification have been made to the Canada Industrial Relations Board and also to the British Columbia Labour Relations Board on behalf of certain owner-operators. The existence of these applications supports our view that these owner-operators consider they are entitled to access to collective bargaining.

We also have carefully considered the issue of whether these owner-operators would fall under the jurisdiction of the *Canada Labour Code* or under the *BC Labour Relations Code*. Based on legal advice received by the Task Force and also based on our own judgement, we consider that the work of the owner-operators is “vital, integral, and essential” to the operation of the ports and also to shipping and navigation. Therefore, we are persuaded that these owner-operators should fall under the jurisdiction of the *Canada Labour Code*. We consider it critical that owner-operators only be certified under one jurisdiction. If the industry becomes fragmented with certain employers being considered to fall under provincial jurisdiction and other employers falling under federal jurisdiction, then it would be much more difficult to manage any future labour dispute.

If it appears that there is any jurisdictional confusion as to whether these trucking companies would fall under both jurisdictions or under provincial jurisdiction, we recommend that the Government of Canada and the BC Government enter into a federal/provincial agreement to ensure that the work would be considered to be of a federal nature. Section 120 of the *Canada Labour Code* appears to us to provide for such a possible outcome.

We recommend that in the interests of clarifying the labour relations situation with respect to the BC Lower Mainland ports, the Minister of Labour for Canada, pursuant to sections 106 and 107 of the *Canada Labour Code*, direct that the Canada Industrial Relations Board at the first available opportunity determine on an expedited basis whether the owner-operators are dependent contractors under the *Canada Labour Code* and have access to collective bargaining. Additionally, we recommend that the Minister of Labour for Canada direct the Canada Industrial Relations Board to confirm that the trucking companies which, on a regular basis, haul containers to and from ports are federal undertakings for the purposes of the *Code*.

If it is decided by the Canada Industrial Relations Board or the BC Labour Relations Board that the owner-operators are capable of being represented by a trade union under labour legislation, we recommend thereafter that the relationship between the trucking companies and the owner-operators be treated as one which is governed by conventional labour relations. This includes treating owner-operators as ‘employees’ for purposes of regulating work stoppages under applicable labour relations legislation, whether or not they choose to unionize.

## **Recommendation #5**

***The federal Minister of Labour take the steps specified below to assist the parties in establishing conditions that can foster future industrial stability in the port sector.***

As we outline elsewhere, a number of applications for certification are being pursued by certain owner-operators. The issue that will arise from this development is that the parties may need assistance reconciling the relationship of the Memorandum of Agreement to a present or future collective agreement and they may need assistance in developing a stable labour relations structure.

There may be a number of owner-operators who do not choose to be represented by a trade union. As stated earlier, our Report is not intended to interfere in the issue as to whether certain trucking companies and owner-operators will continue to be governed by the Memorandum of Agreement.

On that grounds that Messrs Ready and Cameron have already established a relationship of credibility among the parties and in recognition of their continuing role pursuant to the existing Memorandum of Agreement, we recommend that the federal Minister of Labour appoint Vince Ready and Peter Cameron under section 106 of the *Canada Labour Code* to work with the

parties to assist them in establishing the conditions that will foster industrial stability.

## Recommendation #6

***The Canada Labour Code and, if necessary, the British Columbia Labour Relations Code should be amended to prohibit picketing at or near gates to port or marine terminals, and to suspend the right of access to the ports by trucking firms during lawful labour disputes.***

One of the most vexing aspects of this dispute is the absolute belief of many stakeholders that it was so difficult to manage because of illegal activity (including violence and intimidation) allegedly by members of the Vancouver Container Truck Association. A number of submissions sought additional legal mechanisms to address illegal behaviour.

Unless we conducted a judicial inquiry, we would be unable to know for certain what occurred. We met with a representative of the police who considered that the dispute had been managed appropriately from a policing point of view. The police did not observe much of the behaviour described by others.

Media coverage and the perception of many stakeholders and the general public tended to conflate three elements. These were: picketing, blockading, and violent intimidation.

Picketing was widespread and consistent throughout the dispute. In the course of our review, the Task Force concluded that most owner-operators could well be considered as dependent contractors and therefore “employees” for purposes of labour legislation. Labour law prohibits employees from taking part in work stoppages and attendant picketing, except under very limited circumstances. These legal prerequisites were not in place at the time of the truckers’ dispute. However, it is important to note that, at the time of the dispute, the participants, and most observers, believed that the work stoppage and picketing were legal. (Those who did question the legality of the work stoppage thought it was a violation of the *Competition Act* – which is unlikely, due to the exception in section 4 of that *Act*.)

Blockading is clearly illegal under common law. Despite this, short episodes of blockading are not uncommon during the early stages of labour disputes. Typically, an affected party responds by getting an injunction, and typically the picketers honour the injunction. According to evidence heard by the Task Force, that is exactly what happened here.

Reports of violence and intimidation are in a different category of seriousness. The Task Force is not in a position to know how widespread such incidents were, but any amount is disturbing. The enforcement problem here is not any inadequacy in the law. These acts are *Criminal Code* offences, and the law provides substantial penalties upon conviction. The problem is one of identifying the offenders and proving their guilt.

The Task Force has attempted to address the concerns we heard in a number of ways. First, we have sought to clarify the legal status of owner-operators and the issue of jurisdiction,

so that there is a clear statutory regime and legal mechanism to manage disputes. Any future work stoppage that is illegal under labour legislation can be dealt with accordingly, using the expertise of the appropriate labour tribunal. Second, we have recommended establishing conditions on licences for owner-operators, such that the licence can be removed if the driver is part of an illegal work disruption. Finally, this recommendation would prohibit picketing at or near ports – even in the case of legal strikes. A union would, however, preserve its right to picket at the premises of the trucking company during such a strike.

This recommendation should be seen as part of a package that includes the provision (described in Recommendation 2) that would temporarily suspend a company's licence during a lockout or legal strike. In the absence of this element of the package, the proposed statutory change would give the union no right to respond at the key site of a company's continued operation during a labour dispute. While a union should not be able to jeopardize access to the ports for parties not involved in the dispute, neither should a company gain an unfair advantage as a result of this restriction on the union's right to picket

## **Recommendation # 7**

***The federal Minister of Transport should direct the Vancouver Port Authority and the Fraser River Port Authority to require that terminal gate operating hours be increased until trucking congestion is eliminated to the extent reasonably possible, and that both Port Authorities establish systems to continuously monitor truck delays, both inside and outside terminal gates.***

Truckers, trucking companies, shippers, and terminal operators all acknowledge that congestion at truck gates is excessive at certain points during the day at Lower Mainland ports. There is, however, no agreement among these parties as to the most appropriate solution to resolve this congestion.

The Task Force does not pretend to the level of expertise necessary to specify an appropriate regime for gate operations. There are constraints within International Longshoremen's & Warehousemen's Union contracts that bear on the economics of longer hours. Off-dock terminals, importers and exporters would also need to accommodate their hours to a change in terminal operations. The Task Force does believe, however, that a permanent increase in open hours at truck gates would contribute significantly to addressing queuing delays at terminals. Commentary from both Montreal and California ports suggests that this is a viable approach.

The Task Force believes that this recommendation as stated is appropriate under either a federal or shared jurisdiction model. Under a federal model, the Port Authorities are required to take a leadership role and seek consensus with truckers and off site terminals not subject to Port Authority direction. Under the shared jurisdiction model, the Port Authorities would require the same change, but the legislated agency would provide a forum for the Port Authorities and other parties to reach agreement on an appropriate commercial solution to fund the changes.

## Recommendation # 8

***The federal Minister of Transport should direct the Vancouver Port Authority and the Fraser River Port Authority to work with terminal operators, off-dock terminals, trucking companies, and owner-operators to evaluate and if appropriate implement a centralized, mandatory reservation system across all terminals at both ports.***

The current reservation system was implemented following the 1999 dispute with the goal of reducing truck delays at the terminals. It seems clear that it has fallen short. All users are dissatisfied with some aspect of the current systems. The online first come first serve approach – with no link to actual cargo bookings – results in overbooking by trucking companies with no cargo, which prevents companies with legitimate cargo bookings from obtaining appointments. There are no effective penalties for misuse of the existing systems, or of rewards for abiding by proper reservation protocols. Reservation systems do not link across terminals, and the coexistence of reservation and non-reservation traffic can add to congestion problems.

Practices elsewhere suggest that if gates are operating a sufficient number of hours, a reservation system may not be required. Again, this is an evaluation that must be carried out by experts. While it would be inappropriate for the Task Force to mandate such a system in the absence of a clear economic rationale, we believe that a decision to adopt a reservation system should consider making it mandatory, applicable to all Lower Mainland terminals, and include penalties for misuse as well as rewards for compliance with the system. Costs associated with developing and implementing the system should be prorated among stakeholders involved.

The Task Force believes that this recommendation is appropriate under either a federal or a shared jurisdiction model. As with the previous recommendation, the difference between the two models lies in the extent to which the Port Authorities work to implement a direction, as opposed to a consensual process led by the legislated agency.

## Recommendation # 9

***The federal Minister of Transport should direct the Port Authorities to work with all stakeholders to improve the efficiency of operations both on and off the dock through application of advanced technology, including such initiatives as open architecture common information systems, intelligent transportation system applications, monitoring the inventory of empty containers, and optical character recognition, transponder, and radio frequency identification technology for security and tracking purposes.***

It is clear from our research that advanced technology is a driving force in achieving world-class productivity in port operations both on and off the dock. There are many examples identified in our best practices research, including development of open architecture common user information systems; installation of intelligent transportation system technologies such as optical character recognition, global positioning systems, and radio frequency identification applications; and development of a virtual container yard to facilitate more efficient transfer of

containers between importers and exporters. The full potential of this technology can only be achieved where system participants coordinate the development and deployment of the technologies they adopt.

The Port Authorities need to take the primary leadership role in ensuring the integration of efforts in this area under the federal model. Under the shared jurisdiction model, the independent agency created by provincial legislation would take the leadership role, but full participation and cooperation by the Port Authorities would be essential..

### **Recommendation # 10**

***The federal Minister of Transport should require the Vancouver Port Authority and the Fraser River Port Authority to make periodic public reports on progress achieved in implementing the recommendations involving those Port Authorities.***

Full public disclosure on a regular basis will ensure that all stakeholders are aware of work underway to address these issues, and of progress achieved. This will address any failure of communication, and encourage stakeholders to play an active part.

### **Recommendation # 11**

***The federal and provincial governments should cost-share the funding of the establishment and ongoing operation of an organization that would mobilize the resources of Lower Mainland academic institutions to expand the capacity and knowledge base of the port community.***

In developing its recommendations the Task Force faced considerable hurdles in obtaining reliable information and data on the operation of the container transportation system in the Lower Mainland. In many cases critical data on system performance are unavailable because no one has accepted responsibility, or provided resources to gather it. In contrast, there was a considerable volume of information available on the performance and issues at the Southern California ports through the research activities undertaken by METRANS. METRANS provides a valuable model as an organization that has successfully channelled its research, education and outreach activities in directions that are of concrete benefit to the port community. The provision of funding by the federal and provincial governments for the development and ongoing operation of a similar organization for the Lower Mainland would benefit the entire port community. This organization could collaborate in its research on advanced technology issues with the efforts of the Bureau of Intelligent Transportation Systems that has recently been established at the University of British Columbia with joint federal-provincial funding.

## **7. Acknowledgements**

We could not have completed our work within the very short time allowed to us without the assistance of a number of people.

Our Special Advisors, Vince Ready and Peter Cameron contributed their vast knowledge of labour relations as well as their deep understanding of the circumstances that led to the 2005 dispute. On several occasions, they reminded us of the real issues we should be considering.

The members of the Task Force Secretariat provided us with invaluable assistance and support.

Patricia Docking, the Executive Director, provided persistent but gentle guidance to us in the unenviable task of trying to keep us moving forward.

Philip Davies, the Director of Research, was relentless in trying to uncover the facts and to determine the practices in other ports.

Cindy Adams kept us organized and was kind enough to tolerate our practice of changing everything several times.

We are grateful for the legal advice we received from Alan Hamilton, QC and Cam Belcher of the law firm of Farris and Company. They did a great deal to help us understand the intricacies of labour law and the unique authority and rights of the Port Authorities.

We are equally grateful for the legal advice we received from Shawn Neylan of the law firm of Stikeman Elliot who introduced us to the arcane world of competition law.

The consulting firm of IBI Group conducted the research for us on best practices in other ports. We are thankful they were able to accomplish so much in an unreasonably short time frame.

We also appreciate the very important contributions of all stakeholders who took the time and made the effort to provide us with their views and to help us understand the complexity of the issues we were dealing with.

Lastly, we should acknowledge the unfailing courtesy extended to us by Mike Henderson, the Pacific Regional Director General of Transport Canada. He was able to ensure that we could proceed expeditiously and with all of the resources necessary.

Any errors or omissions in the Report are, of course, the sole responsibility of the three Task Force members.

## **8. APPENDICES**

### **Appendix 1 - Task Force Terms of Reference**

#### **TASK FORCE TO EXAMINE TRANSPORTATION AND INDUSTRIAL ISSUES RELATED TO PORTS IN VANCOUVER**

##### **CONTEXT**

There is an urgent need for a Task Force to be established to examine the functions and structure of the transportation and industrial relationships issues related to the movement of containers into and out of ports in the Lower Mainland of British Columbia (BC) with a view to recommend a long-term strategy to facilitate industry relations, prevent the disruption of the movement of containers and maintain the efficiency and effectiveness of the national transportation system.

To this effect, the Minister of Transport, in collaboration with the Minister of Labour and the Minister of Industry, will establish a Task Force to carry out a review of the transportation and related labour issues underlying the current dispute, jointly with the Province of BC. The timeframe for the review is consistent with that of the Order-in-Council related to the dispute, dated July 29, 2005 (P.C. 2005-1356).

##### **MEMBERSHIP and DELEGATION**

The Task Force shall be comprised of three appointed members and will retain the services of Vince Ready as Special Advisor to the Task Force.

The Task Force will be responsible for establishing processes and procedures that govern how its mandate will be carried out. For the purposes of discharging its mandate, the Task Force may retain the services of expert advisors as deemed necessary.

##### **SCOPE**

The Task Force is generally mandated to examine transportation and related industrial relations issues affecting the owner-operator truckers and trucking operators. Specifically, the mandate of the Task Force would be to:

Examine and make recommendations on the roles of affected port authorities, brokers, freight-forwarders, shippers, trucking firms, truck owner-operators, as well as the provincial and federal governments with regard to optimizing efficiency in the movement of containers in the Lower BC Mainland, including movements into and out of the ports of Vancouver, Fraser River and North Fraser;

Examine and report on possible synergies and optimization in the operations of the various port authorities, including such elements as 24 hour services;

Examine and provide recommendations on the enforceability, by way of licensing or other effective mechanisms, of any standards for remuneration and other conditions, including the application of such standards to companies who are not party to an agreement on remuneration; the potential impact of new entrants; and corporate restructuring (successorship), and on the mechanisms required for any recommended licensing regimes to be established and enforced at the ports of Vancouver, Fraser River and North Fraser, including access compliance;

Examine costs and possible impediments and inefficiencies in the movement of containers, including wait times and dispatch procedures, within the Lower BC Mainland;

Examine and provide options and recommendations regarding legislative and/or regulatory frameworks available to the federal and provincial governments and how these may be applicable;

Examine and report on best practices at other ports and how they may apply in these circumstances;

#### Industrial Relations Component:

Examine the industrial relations between the trucking companies and container truck drivers serving the ports of Vancouver, Fraser River and North Fraser, including the process for determining rates and other contract terms and conditions and the process for resolving disputes; and

Examine other outstanding issues of representation.

### **REPORTS and TIMING**

The Task Force is to concurrently provide interim reports and a final report to the Federal Minister of Transport, the Federal Minister of Labour, the BC Minister of Labour and Citizen's Services, and the BC Minister of Transportation. Specifically, the Task Force shall submit an interim report no later than 45 days from the start of its mandate containing its recommendations on the matters referred to in items #3, 5 and 7 of the Terms of Reference, and shall present its final report, including recommendations, before the end of the 90-day timeframe provided by the Order-in-Council related to the dispute, dated July 29, 2005 (P.C. 2005-1356).

August 4, 2005

## Appendix 2 - Orders-in-Council



P.C. 2005-1356  
July 29, 2005

PRIVY COUNCIL • CONSEIL PRIVE

Whereas the Governor in Council is of the opinion that an extraordinary disruption to the effective continued operation of the national transportation system, other than a labour disruption, exists;

Whereas the Governor in Council, pursuant to section 47 of the *Canada Transportation Act*, may take any step that the Governor in Council considers essential to stabilize the national transportation system;

Whereas the Governor in Council is of the opinion that a failure to act under section 47 of the *Canada Transportation Act* at this time would be contrary to the interests of users and operators of the national transportation system and that there are no other provisions in that Act or in any other Act of Parliament that are sufficient and appropriate to remedy the situation and counter the anticipated damage that would be caused by the ongoing extraordinary disruption of the national transportation system;

And whereas the Governor in Council considers it essential that, to stabilize the national transportation system, an authorization be granted to a facilitator, truckers, shippers, brokers, ports and the representatives of those persons and any other persons whose agreement, consent, participation or co-operation is required to resolve the dispute and implement any element of the proposed solution, including for greater certainty and if applicable, a public officer, on the terms and conditions prescribed in the annexed Order;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Transport and the Minister of Industry in his capacity as the minister responsible for the Competition Bureau, pursuant to section 47 of the *Canada Transportation Act*, hereby makes the annexed *Order Authorizing Negotiations for the Settlement of the Dispute Causing the Extraordinary Disruption of the National Transportation System in Relation to Container Movements into and out of Certain Ports in British Columbia*.

CERTIFIED TO BE A TRUE COPY—COPIE CERTIFIÉE CONFORME

A handwritten signature in black ink, appearing to be "A. H. L. S.", written over a horizontal line.

CLERK OF THE PRIVY COUNCIL—LE GREFFIER DU CONSEIL PRIVE



CANADA

PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 2005-1365  
August 4, 2005

Whereas the Governor in Council is of the opinion that an extraordinary disruption to the effective continued operation of the national transportation system, other than a labour disruption, continues to exist;

Whereas the Governor in Council, pursuant to section 47 of the *Canada Transportation Act*, may take any steps that the Governor in Council considers essential to stabilize the national transportation system;

Whereas an amendment to Order in Council P.C. 2005-1356, made on July 29, 2005, is required in order to provide specific directives to the Vancouver Port Authority and the Fraser River Port Authority;

And whereas the Governor in Council is of the opinion that a failure to make an Order modifying Order in Council P.C. 2005-1356 made on July 29, 2005 under section 47 of the *Canada Transportation Act* at this time would be contrary to the interests of users and operators of the national transportation system and that there are no other provisions in that Act or in any other Act of Parliament that are sufficient and appropriate to remedy the situation and counter the anticipated damage that would be caused by the ongoing extraordinary disruption of the national transportation system;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Transport and the Minister of Industry in his capacity as the minister responsible for the Competition Bureau, pursuant to section 47 of the *Canada Transportation Act*, hereby makes the annexed *Order Amending the Order Authorizing Negotiations for the Settlement of the Dispute Causing the Extraordinary Disruption of the National Transportation System in Relation to Container Movements into and out of Certain Ports in British Columbia*.

CERTIFIED TO BE A TRUE COPY—COPIE CERTIFIÉE CONFORMÉ

CLERK OF THE PRIVY COUNCIL—LE GREFFIER DU CONSEIL PRIVÉ

ORDER AMENDING THE ORDER AUTHORIZING NEGOTIATIONS FOR THE  
SETTLEMENT OF THE DISPUTE CAUSING THE EXTRAORDINARY  
DISRUPTION OF THE NATIONAL TRANSPORTATION SYSTEM IN  
RELATION TO CONTAINER MOVEMENTS INTO AND OUT OF CERTAIN  
PORTS IN BRITISH COLUMBIA

AMENDMENTS

1. The definition "ports" in section 1 of the *Order Authorizing Negotiations for the Settlement of the Dispute Causing the Extraordinary Disruption of the National Transportation System in Relation to Container Movements into and out of Certain Ports in British Columbia*<sup>1</sup> is replaced by the following:

"ports" means, as the context requires:

- (a) the following port facilities, namely,
  - (i) the Port of Vancouver,
  - (ii) the Port of North Fraser, and
  - (iii) the Port of Fraser River; or
- (b) the following port authorities, namely,
  - (i) the Vancouver Port Authority,
  - (ii) the North Fraser Port Authority, and
  - (iii) the Fraser River Port Authority. (*ports*)

2. The Order is amended by adding the following after section 3:

APPLICATION TO PORT OF VANCOUVER

3.1 (1) The Vancouver Port Authority is directed, in respect of the territory under its jurisdiction and control,

- (a) to establish a licensing system giving access to the Port of Vancouver to trucks and other road transportation equipment for the delivery, pick-up or movement of containers into and out of that port;
- (b) to include as two of the conditions of a licence issued under paragraph (a) that the applicant

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<sup>1</sup> SOR/2005-232

- (i) be a signatory to the Memorandum of Agreement between Trucking Companies (Owners/Brokers) and Vancouver Container Truckers' Association dated July 29, 2005 and be in full compliance with that agreement, and
  - (ii) accepts the arbitration process set out in section 10 of the Memorandum of Agreement for the purpose of reaching a final and binding resolution of any dispute relating to the interpretation or application of the licence; and
  - (c) to prohibit access to the Port of Vancouver to any truck or other road transportation equipment referred to in paragraph (a) that does not meet the requirements of paragraph (b).
- (2) The Vancouver Port Authority has the freedom to do the things directed of it under subsection (1) without the constraints imposed under the *Competition Act* that may otherwise apply.
- (3) Nothing in this section is intended to affect any collective labour agreement.

#### APPLICATION TO PORT OF FRASER RIVER

3.2 (1) The Fraser River Port Authority is directed, in respect of the territory under its jurisdiction and control,

(a) to establish a licensing system giving access to the Port of Fraser River to trucks and other road transportation equipment for the delivery, pick-up or movement of containers into and out of that port;

(b) to include as two of the conditions of a licence issued under paragraph (a) that the applicant

- (i) be a signatory to the Memorandum of Agreement between Trucking Companies (Owners/Brokers) and Vancouver Container Truckers' Association dated July 29, 2005 and be in full compliance with that agreement, and

- (ii) accepts the arbitration process set out in section 10 of the Memorandum of Agreement for the purpose of reaching a final and binding resolution of any dispute relating to the interpretation or application of the licence; and

(c) to prohibit access to the Port of Fraser River to any truck or other road transportation equipment referred to in paragraph (a) that does not meet the requirements of paragraph (b).

(2) The Fraser River Port Authority has the freedom to do the things directed of it under subsection (1) without the constraints imposed under the *Competition Act* that may otherwise apply.

(3) Nothing in this section is intended to affect any collective labour agreement.

(4) Nothing in this section prohibits the Fraser River Port Authority from recognizing a licence issued under section 3.1 by the Vancouver Port Authority as sufficient for the purposes of this section.

COMING INTO FORCE

3. This Order comes into force on the day on which it is made.



CANADA

PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 2005-1366  
August 8, 2005

Whereas the Governor in Council is of the opinion that an extraordinary disruption to the effective continued operation of the national transportation system exists in relation to the movement of containers into and out of ports in the Lower Mainland of British Columbia;

And whereas the Governor in Council considers it essential to inquire and report on the functions and structure of the transportation system related to the movement of containers into and out of ports in the Lower Mainland of British Columbia with a view to making long-term improvements to this part of the national transportation system that would prevent the disruption of the movement of containers and maintain the efficiency and effectiveness of the national transportation system;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Transport, pursuant to section 7.1 of the *Department of Transport Act*, hereby approves:

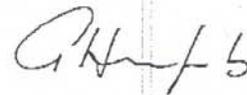
- (a) the appointment by the Minister of Transport of the following persons, collectively known as the Task Force, to inquire into the issues underlying the disruption and report on long-term improvements to that part of the national transportation system relating to the movement of containers into and out of ports in the Lower Mainland of British Columbia, that would prevent the disruption of the movement of containers and maintain the efficiency and effectiveness of the national transportation system, to hold office during pleasure, for a term ending October 27, 2005:
  - (i) Eric John Harris, Q.C., of Vancouver, British Columbia, who shall be remunerated at the hourly rate set out in the annexed Schedule A, which hourly rate is within the range (\$275 - \$400);
  - (ii) Kenneth Freeman Dobell of Delta, British Columbia, who shall be remunerated at the hourly rate set out in the annexed Schedule B, which hourly rate is within the range (\$275 - \$400); and

.../2

- 2 -

- (iii) Randolph Kerry Morriss of Ottawa, Ontario, who shall be remunerated at the per diem rate set out in the annexed Schedule C, which per diem rate is within the per diem range (\$175 - \$300), effective August 17, 2005; and
- (b) the reimbursement of travel and other expenses incurred by these persons in the performance of their duties in accordance with the applicable Treasury Board directives.

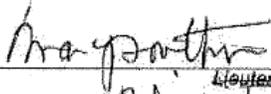
CERTIFIED TO BE A TRUE COPY-COPIE CERTIFIÉE CONFORME



CLERK OF THE PRIVY COUNCIL-LE GREFFIER DU CONSEIL PRIVÉ

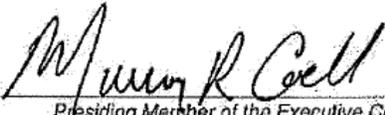
PROVINCE OF BRITISH COLUMBIA  
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 599, Approved and Ordered AUG - 4 2005

  
Administrator  
Lieutenant Governor  
Administrative

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the ~~Lieutenant Governor~~ <sup>Administrator</sup>, by and with the advice and consent of the Executive Council, authorizes the Minister of Transportation and the Minister of Labour and Citizens' Services to enter into an agreement with the government of Canada for the purposes of enquiring into problems in the container trucking industry insofar as they affect the compensation or working conditions of drivers, or the unit costs or reliability of container trucking, in respect of the operations of the Vancouver Port Authority and the Fraser River Port Authority.

  
Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

Authority under which Order is made:

Act and section: Constitution Act, R.S.B.C. 1996, c. 66, section 16

Other (specify):

July 29, 2005

page 1 of 1

re-sub 682/2005/88

### **Appendix 3 - List of Submissions**

#### **SUBMISSIONS TO TASK FORCE ON TRANSPORTATION AND INDUSTRIAL RELATIONS IN THE PORTS OF VANCOUVER**

1. Ace Govender
2. British Columbia Trucking Association
3. British Columbia Trucking Association – follow up submission
4. Business Council of British Columbia
5. Canadian Association of Importers and Exporters Inc.
6. Canadian Industrial Transportation Association - Bob Ballantyne
7. Canadian Manufactures & Exporters
8. Canadian Special Crops Association
9. Canadian Trucking Alliance
10. Catalyst Paper Corporation
11. Catalyst Paper Corporation –follow up submission
12. CAW-Canada Local 2006 (formerly known as the Vancouver Container Truck Association) – follow up submission
13. Charles-Michael Jefferson
14. Don Jordan on behalf of Pro West Transport Ltd and Team Transport Ltd
15. Forest Products Association of Canada
16. Fraser River Port Authority
17. Fraser Surrey Docks LP. , P&O Ports Canada, TSI Terminals Inc
18. Gloria Vander Schaaf
19. Heenan Blaikie on behalf of Trucking Companies
20. Heenan Blaikie on behalf of Trucking Companies –follow up submission
21. Independent Contractors and Business Association of British Columbia
22. International Longshoremen's & Warehousemen's Union Local 500
23. International Longshoremen's & Warehousemen's Union Local 500 –follow up submission
24. James Patterson
25. Manitoba Pulse Growers Association Inc.
26. Neil Cumming
27. North Fraser Port Authority
28. Positorial Industries Ltd.
29. Province of Alberta – Minister of Infrastructure and Transportation
30. Province of Manitoba - Minister of Transportation and Government Services
31. Province of Ontario – Minister of Labour
32. Province of Quebec – Minister of Labour
33. Province of Saskatchewan - Minister of Labour
34. Rajwant Bagri
35. Retail Council of Canada
36. Richmond Chamber of Commerce
37. Sandhu Sukhjinder
38. Saskatchewan Pulse Growers

39. Scott McLean Bennie
40. Shamsher Tagger
41. Teamsters Local Union 31
42. The Corporation of Delta
43. The Sanghaz
44. Trevor D. Heaver
45. Vancouver Container Truck Association
46. Vancouver Port Authority
47. Vedder Transport
48. Vicki Dutton
49. West Coast Containers Freight Handlers Association
50. Western Canadian Shippers' Coalition
51. Western Canadian Shippers' Coalition – follow up submission
52. Westnav Container Services Ltd.
53. Westwood Shipping Lines
54. William Switzer
55. Wolfgang Schmitz

#### **Appendix 4 - List of Interviewees**

<b>Organization</b>	<b>Interviewee(s)</b>
BC Federation of Labour	Jim Sinclair Philip Legg
BC Maritime Employers Association	Frank Pasacreta
BC Trucking Association	Paul Landry Luoise Yako
Canadian Manufacturers and Exporters	Werner Knittel
CRSA Logistics Ltd.	Doug Stewart
Fraser River Port Authority	Alan Domass Ed Kargl
Fraser Surrey Docks Ltd.	Jeff Scott Michael Baker
Greater Vancouver Container Trucking Companies	Richard Longpre Peter Gall Bruce Peters Chris Kaulback
International Longshoremen's & Warehousemen's Union Local 500	Tom Dufresne
North Fraser Port Authority	Allan Baydala
P&O Ports	Cliff Stuart Tom Broader
Teamsters Union 31	Don Davies
TSI Terminal Systems Inc	Norman C. Stark Barrie Sime
Vancouver Container Truck Association	Ken Halliday Paul Uppal Paul Johal Bernard Birdo
Vancouver Police Department	Rick Smitas
Vancouver Port Authority	Gordon Houston Jim Cox Fiona Smith Scott Galloway Duncan Wilson Bob Hayter Peter Xotta Chris Badger Howard Ehrlich
West Coast Container Freight Handlers Association	Kevin Ouellette
Western Canadian Shippers' Coalition	Ian May Ian McIver Bill LeGrow
Legal Counsel for Various Trucking Companies	Don Jordan
Public Relations Representative for P&O Ports/Fraser Surrey Docks/ TSI Terminal Systems Inc.	